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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 33

**THE PEOPLE OF THE STATE OF NEW YORK ON THE
RELATION OF THE WOODHAVEN GAS LIGHT COM-
PANY, PLAINTIFF IN ERROR,**

**THE PUBLIC SERVICE COMMISSION OF THE STATE OF
NEW YORK**

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

STATE OF NEW YORK

(20,110)

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No. 282

THE PEOPLE OF THE STATE OF NEW YORK ON THE
RELATION OF THE WOODHAVEN GAS LIGHT COM-
PANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF
NEW YORK

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

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[fols. 1-7] **IN NEW YORK SUPREME COURT, NEW YORK
COUNTY**

**THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THE WOODHAVEN
GAS LIGHT COMPANY, Relator,**

against

**LEWIS NIXON, Constituting the Public Service Commission of the
State of New York for the First District, Respondent**

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of New York:

The petition of The Woodhaven Gas Light Company respectfully shows:

First. Your petitioner is a domestic corporation, incorporated on August 30th, 1871, under an Act of the Legislature passed February 16th, 1848 (Chapter 37), entitled "An Act to authorize the formation of Gas Light Companies," and has received the consent of the local municipal authorities to the construction and maintenance of mains and service pipes in and under any and all of the streets and highways of the former Town of Jamaica, now the Fourth Ward of the Borough of Queens in the City and State of New York, and to the distribution and sale of gas in said locality.

[fol. 8] Second. Your petitioner is engaged in the business of supplying gas to consumers in the Fourth Ward of the Borough of Queens within the First District of the Public Service Commission of the State of New York.

Third. Respondent, Lewis Nixon, at all times hereinafter mentioned, constituted the Public Service Commission of the State of New York for the First District, having been duly appointed under and by virtue of the provisions of Chapter 48 of the Consolidated Laws of the State of New York, and Edward J. Glennon and Alfred M. Barrett were duly appointed Deputy Public Service Commissioners.

Fourth. On or about the 10th day of June, 1919, the Public Service Commission for the First District adopted a resolution giving notice of a hearing upon its own motion to inquire and determine whether an order should be made directing your petitioner to extend its gas mains, services and other apparatus to such extent as may be necessary to reasonably furnish gas to the residents of Springfield, Laurelton, Rosedale, Rosedale Terrace, St. Albans, Locust Manor, Locust Lawn, South Jamaica Place, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bayview Landing; and pursuant to such notice hearings were held before said Commission on the 26th day of June, 1919,

and on other days to which said hearings were adjourned at which hearings evidence was adduced by said Commission and others in support of such proposed extension of gas mains, and evidence was adduced by your petitioner in opposition thereto.

[fol. 9] Fifth. On the 20th day of April, 1920, said Commission made its order in case designated as Number 2376, whereby it was directed that your petitioner extend its gas mains and services in such manner as may be required reasonably to serve with gas the residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton, in the Fourth Ward of the Borough of Queens, City of New York, and that the construction of said extension be completed and said extension be put in service on or before November 1, 1920. The said order further provided that it was without prejudice to any further or other proceeding or proceedings and order or orders in respect to the extension of the mains and services of your petitioner to the communities known as Rosedale, Rosedale Terrace, St. Albans, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bayview Landing. The order further required that your petitioner notify the Commission within ten (10) days after service thereof, whether the terms of the order were accepted and would be obeyed. A copy of said order is hereto annexed marked Exhibit "A" and made a part hereof. An opinion or memorandum was written by Deputy Commissioner Edward J. Glennon, who presided, which was adopted by the Commission, a copy of which is hereto annexed marked Exhibit "B" and made a part hereof.

Sixth. Your petitioner feeling aggrieved by the order of the Commission, and in pursuance of the Public Service Commission's Law, petitioned for a rehearing upon the matters covered thereby. In said [fol. 10] petition your petitioner notified the Commission that said order was not accepted and could not be obeyed. The petition for a rehearing was denied by the Commission by an order dated the 4th day of May, 1920, a copy of which order is hereto annexed marked Exhibit "C," and made a part hereof.

Seventh. Your petitioner charges that the order of the Commission dated April 20, 1920, is not authorized by the Public Service Commissions' Law, or any other law, and is illegal upon the following grounds, among others:

1. That purporting to act under Subdivision 2 of Section 66 of the Public Service Commissions' Law, which empowers it to authorize "reasonable extensions," the Commission directed your petitioner to make an extension of gas mains costing in material and labor alone at least Three hundred forty-one thousand, six hundred and forty-six dollars (\$341,646), while the uncontradicted evidence was that your petitioner has no surplus funds; that for the first ten (10) months of 1919 at a rate of ninety-five cents per thousand cubic feet fixed by the Public Service Commission from

January to June and at the rate of one dollar from June to November the expenditures of your petitioner exceeded its revenues by sixteen thousand four hundred forty-two dollars (\$16,442) and that it was losing over five cents (5c) on each one thousand (1,000) cubic feet sold to its present consumers. That at the maximum statutory rate of one dollar per 1,000 cubic feet of gas (Chap. 125, Laws of 1916), it was shown that the expenses of your petitioner exceeded [fol. 11] its revenues by Two thousand six hundred forty-eight and 52/100 dollars (\$2,648.52) or a loss of \$.0166 for each 1,000 cubic feet sold during the period of June 1, 1919, to October 31, 1919.

2. That the testimony of the expert witness called by the Commission establishes the fact that in the territory to which the extension has been ordered the number of consumers per mile of main will average twenty-two (22) as compared with one hundred fifty (150) consumers per mile in the territory at present served, from which it appears affirmatively that service in the new territory will result in still greater loss than that hereinbefore shown in subdivision 1.

3. That the testimony of the expert witness called by the Commission establishes that it would be bad engineering judgment to install mains to any of the localities named in the hearing order without providing an installation sufficient for the intervening and surrounding territories, from which it affirmatively appears that the extension ordered is in effect an extension to all the territory embraced in the hearing order although such extension purports not to have been ordered.

4. That it was shown by undisputed evidence before the Commission that the geographical position of the territory to which an extension has been ordered is such with reference to intervening and surrounding territory that a compliance with the order according to good engineering practice requires an installation sufficient for such intervening and surrounding territory and it affirmatively appears such territory will demand and receive service by further extension resulting in a total expenditure of Nine hundred seven [fol. 12] thousand one hundred ninety-one and 53/100 dollars (\$907,191.53) according to undisputed testimony.

5. That the Commission as shown by its opinion hereto annexed was influenced improperly by unverified statements of persons present at the hearings to the effect that the residents of the locality were willing to organize a gas company for the purpose of supplying the territory. At the hearing the Trial Deputy ruled such statements to be irrelevant and later as shown by his opinion based his decision, adopted by the Commission, upon such statements.

6. That the Commission as shown by its opinion hereto annexed based its decision also upon the theory that it is the duty of relator to supply gas to those communities irrespective of undisputed testimony that relator is operating at a loss which will be increased by the extension and service ordered.

X 7. That the Commission directed an extension, the cost of labor and materials alone being Three hundred forty-one thousand six hundred forty-six dollars (\$341,646), in face of the testimony of the Commission's engineer appraising the entire plant of your petitioner at Five hundred eighty thousand five hundred twenty-seven dollars (\$580,527) and in face of the uncontradicted testimony that your petitioner was operating at a loss.

8. That the order of the Commission is in violation of the Constitution of the United States and the State of New York in that it deprives your petitioner of its property without due process of law and denies your petitioner the equal protection of the law.

9. That the Commission erred in the proceeding in denying your [fol. 13] petitioner the right to prove the amount of its going concern value as part of the value of its plant.

3 + 10. That said order is illegal and void in that it directs an extension of gas mains which is not a "reasonable extension" within the meaning of Subdivision 2 of Section 63 of the Public Service Commissions' Law. There is no evidence to show that the extension directed by the Commission will render any return upon the investment necessary to carry out the extension, and the uncontradicted evidence is that your petitioner is now serving its existing consumers at a loss.

11. That it was shown that the present value of your petitioner's property devoted to the public use and excluding going concern value is at least \$1,665,031. A seven per cent (7%) return upon such valuation would require a net income of \$116,652. Your petitioner, it was shown, is not receiving any return upon any of its property.

No previous application for the relief asked herein has been made to any Court or Judge.

Wherefore, your petitioner prays that a writ of certiorari be issued and allowed in this Circuit directed to Lewis Nixon, as Public Service Commissioner of the State of New York for the First District, commanding him to certify and return to this Court all and singular the proceedings had by the Commission in Case No. 2376 relative to the direction of extending gas mains to the aforementioned localities in the Borough of Queens, City of New York; and requiring him to certify and return to this Court the record and all and singular the proceedings had before him, or before his Deputy, in and upon the hearing and determination in the aforesaid proceeding before said Commission, and which was determined in and by [fol. 14] the said orders made by said Commission on April 20th, 1920, and May 4th, 1920, together with all the testimony and evidence upon which he or his Deputy and Acting Commissioner proceeded or arrived at the determination; a statement of the reasons for arriving at such a determination and of the method adopted in so doing; a statement showing under what law or by virtue of what law or authority such determination was made; and this Court will

upon such terms as justice requires direct that the execution of the determination made as aforesaid, be stayed and that the order of the Public Service Commission of the State of New York for the First District dated April 20, 1920, directing your petitioner to extend its gas mains in the Borough of Queens, as hereinbefore described, be in all respects stayed and suspended until the final disposition of the writ of certiorari and the final order of this Court in this proceeding and for such other and further relief in the premises as may be just and proper.

Dated June 15th, 1920.

The Woodhaven Gas Light Company, by A. F. Staniford,
Vice-President.

[fol. 15] Jurat showing the foregoing was duly sworn to by A. F. Staniford omitted in printing.

[fol. 16] EXHIBIT A ANNEXED TO PETITION FOR WRIT OF
CERTIORARI

Before the Public Service Commission for the First District, No. 49
Lafayette Street, Borough of Manhattan, City of New York, 20th
Day of April, 1920.

Present: Hon. Edward J. Glennon, Deputy and Acting Commissioner.

Case No. 2376

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York

Final Order

A hearing having been duly heard in the above entitled proceeding by and before the Commission of June 26, 1919, and certain adjourned dates to and including March 29, 1920, Honorable Edward J. Glennon, Deputy Commissioner, presiding; Messrs. Cullen & Dykman by Jackson A. Dykman, and Edward J. Crummey, of Counsel, appearing for the Woodhaven Gas Light Company, Edgar F. Hazelton, appearing for the Citizens Central Gas Committee of [fol. 17] the Fourth Ward of the Borough of Queens; Messrs. Aron & Wise, by J. H. O'Connell, of Counsel, appearing for the Hatheon-House Corporation and the Land Credit Corporation, and Edward M. Deegan, Assistant to the Counsel to the Commission attending; and the Commission being of the opinion after said hearing that the mains and services of the Woodhaven Gas Light Company should

be extended to serve with gas the residents of Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton, in the Borough of Queens, City of New York, it is

Ordered that the Woodhaven Gas Light Company be and it hereby is directed to extend its gas mains and services in such manner as may be required reasonably to serve with gas the residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton in the Fourth Ward of the Borough of Queens in the City of New York.

Further ordered that the construction of the said extension be completed and said extension be put into service on or before November 1, 1920.

Further ordered that this Order shall be without prejudice to any further or other proceeding or proceedings and order or orders therein in respect to the extension of the mains and services of the Woodhaven Gas Light Company to the communities known as Rosedale, Rosedale Terrace, St. Albans, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bay View Landing in the Borough of Queens, City of New York.

Further ordered that this Order shall take effect forthwith, and that within ten (10) days after service thereof said Woodhaven Gas [fol. 18] Light Company shall notify the Commission in writing whether the terms of this order are accepted and will be obeyed.

By the Commission.

James B. Walker, Secretary. (L. S.)

STATE OF NEW YORK,

County of New York, ss:

I, James B. Walker, Secretary of the Public Service Commission for the First District, do hereby certify, that I have compared the above with the original approved by said Commission on April 20, 1920, and that it is a correct transcript therefrom and of the whole of the original.

In testimony whereof, I have hereunto subscribed my hand and affixed the seal of the Commission, this 20th day of April, 1920.

James B. Walker, Secretary.





[fol. 19] EXHIBIT B ANNEXED TO PETITION FOR WRIT OF CERTIORARI
STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT

Case No. 2376

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Memorandum

Deputy Commissioner GLENNON:

This proceeding was instituted by the Commission upon its own motion against the Woodhaven Gas Light Company, for its failure to supply gas to the residents of Springfield and several other districts in the territory covered by its franchise in the Fourth Ward of the Borough of Queens. The residents of Springfield and the surrounding districts claimed, on the one hand, that they are entitled to be supplied with gas by the Public Service Corporation in that district almost as a matter of right; while the Company, on the other hand, contends that it would not be profitable at the present time to [fol. 20] expend the money necessary for these improvements. All the places where gas is desired by the residents have developed considerably in recent years in spite of the lack of gas.

Before complaining to the Commission, several conferences were had between representatives of the Company and the Central Gas Committee of the Fourth Ward of the Borough of Queens, with the view to the installation of gas mains. It seems that the Company even went so far as to send its representative to Springfield and there, on one occasion, he addressed a meeting of the residents on the question of a supply of gas. I am convinced that the representatives of the Company did promise to make the necessary installations when this matter was taken up in 1916. Many of the houses in these localities are piped for gas. This would seem to indicate that promises had been made by the Company officials to supply the demand. A considerable amount of gas pipe of different sizes was ordered and subsequently delivered to the Company's storage yards at Jamaica. The members of the Central Gas Committee testified that they had been led to believe by one of the Company's superintendents that this pipe was to be used for an extension of service into Springfield. I am satisfied that the pipe in question was ordered primarily for the purpose of constructing gas mains to Springfield. Had the pipe been used by the Company at the time it was ordered and promised, the Company would have saved a considerable amount of money in making its extensions. That the cost

of making any large extension at the present time is high must be conceded, but as the Court of Appeals pointed out in *People ex rel. New York and Queens Gas Co. vs. McCall*, 219 N. Y., 84 "It is [fol. 21] the duty of the relator to supply their needs if practicable (*Wisc. M. & P. R. R. vs. Jacobson*, 179 U. S., 287; *People ex rel. Woodhaven Gas Light Company vs. Deehan*, 152 N. Y., 528). The cost of the extension is not the only matter for consideration (*Oregon R. R. & N. Co. vs. Fairchild*, 224 U. S., 510, 529)."

The Woodhaven Company is the only corporation which has a franchise to serve gas in the territory under consideration. It was incorporated in 1871 for the purpose of manufacturing and supplying gas for lighting the streets, avenues, public and private buildings in the Town of Jamaica, which is now the Fourth Ward of the Borough of Queens. It thereafter obtained secondary franchises to lay its mains for the purpose of lighting the streets and furnishing gas to public buildings and to private consumers. In accepting this valuable grant, it assumed corresponding obligations. One of its chief obligations is to supply gas to those communities where the necessity therefor is apparent.

Should this Company be unable to comply with the demands of the public, it should, at all times, be ready to permit others to invade its franchise territory. In fact, Counsel for the Central Gas Committee stated that the residents themselves were perfectly willing to organize a gas company for the purpose of supplying this territory. A public utility company should not be allowed to assume a "Dog in the manger" attitude. Where there is a shortage of homes, people should be encouraged to build up the outlying territory and, as an incentive to build, utility corporations should, as far as possible, do their part in supplying necessities controlled wholly by them. I do [fol. 22] not mean to say that an extension should be made which would involve a considerable sum of money to supply only a few people. However, I am of the opinion that in a case such as this those territories should be supplied with gas where it is reasonable to suppose that it will be of benefit to all parties in interest.

I have given considerable time and study to the questions at issue and I have reached the conclusion that an Order should be made requiring the Woodhaven Gas Light Company to extend its gas mains, so as to reasonably serve the districts known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton. The Order should direct the Company to complete the work and supply gas to those localities not later than November 1, 1920. The proceedings as to other localities will be denied at this time without prejudice, however, to future proceedings with regard thereto.

Edward J. Glennon, Deputy Commissioner.

Dated April 16th, 1920.

[fol. 23] EXHIBIT C ANNEXED TO PETITION FOR WRIT OF
CERTIORARI

Before the Public Service Commission for the First District, No. 49
Lafayette Street, Borough of Manhattan, City of New York, 4th
day of May, 1920.

Present: Hon. Alfred M. Barrett, Deputy and Acting Commis-
sioner.

Case No. 2376

In the Matter of the Hearing on the Motion of the Commission on
the Question of the Extension of the Gas Mains of THE WOOD-
HAVEN GAS LIGHT COMPANY to Such Extent as May be Necessary
to Serve Residents of Springfield, Laurelton, and Certain Other
Localities in the Borough of Queens, City of New York.

Order Denying Rehearing

An order having been made in the above entitled matter on
April 20, 1920, directing the Woodhaven Gas Light Company to ex-
tend its gas mains and services in such manner as may be required
reasonably to serve with gas the residents of the communities known
as Locust Manor, Locust Lawn, South Jamaica Place, Springfield
and Laurelton in the Fourth Ward of the Borough of Queens and
by petition verified April 29th, 1920, the Woodhaven Gas Light
Company, having made application for a re-hearing herein, and in
[fol. 24] the judgment of the Commission sufficient reason therefor
not having been made to appear, it is

Ordered that said application for a re-hearing be and the same
hereby is denied.

By the Commission.

James B. Walker, Secretary. (L. S.)

STATE OF NEW YORK,

County of New York, ss:

I, James B. Walker, Secretary of the Public Service Commission
for the First District, do hereby certify, that I have compared the
above with the original approved by said Commission on May 4,
1920, and that it is a correct transcript therefrom and of the whole
of the original.

In testimony whereof, I have hereunto subscribed my hand and
affixed the seal of the Commission this 4th day of May, 1920.

James B. Walker, Secretary.

Order for Writ of Certiorari

[Title omitted]

The relator, The Woodhaven Gas Light Company, having moved this Court for an order granting a writ of certiorari to review an order of the Public Service Commission of the State of New York for the First District, dated April 20, 1920, and for a direction by clause in the writ or by a separate order that the execution of said determination of the Public Service Commission of the State of New York for the First District be stayed pending the certiorari and until the further direction of the Court and for such other and further relief as to the Court may seem just and proper, and the said motion having duly come on to be heard,

Now on reading the notice of motion dated June 24th, 1920, and the petition of the relator, The Woodhaven Gas Light Company, verified June 15, 1920, with proof of service thereof and the exhibits and there being no affidavit submitted in opposition on behalf of the respondent, and after hearing Jackson A. Dykman, Esq., for the relator, and George Stover, Esq., for the respondent in opposition, and due deliberation having been had, and it appearing that great and irreparable damage would otherwise result to the petitioner, it is specifically found and decided as follows: That if the order of the Public Service Commission of the State of New York for the First District dated April 20, 1920, be executed and the relator compelled to extend its gas mains and services in such manner as may be required reasonably to serve with gas the residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton in the Fourth Ward of the Borough of Queens, City of New York, and the construction of the said extension completed and the same put in service on or before November 1, 1920, and such order of the Public Service Commission of the State of New York for the First District take effect forthwith, great and irreparable damage will result to the relator, the nature of which is specified as follows, namely: Relator will be compelled to expend a large sum of money amounting, according to the testimony introduced by the respondent, to at least \$341,646, although the uncontradicted evidence introduced by the petitioner shows that it has no surplus fund and that it is at the [fol. 27] present time and was during the year 1919 serving its present customers at a loss and the loss which would result from the service of consumers in the territory to which the extension has been ordered would not be absorbed therefore by the general revenue and earnings of the relator; the evidence submitted to the Court in support of this finding being identified by reference thereto as follows, namely: the petition verified June 15, 1920, and the evidence taken before the Public Service Commission of the State of New York for the First District, and upon filing the opinion of the Court,

Now, therefore, on motion of Cullen & Dykman, attorneys for the petitioner, it is

Ordered that a writ of certiorari issue pursuant to the prayer of the petition to Lewis Nixon, constituting the Public Service Commission of the State of New York for the First District, returnable at the office of the Clerk of the County of New York within twenty days after the service upon respondent of the writ; and it is further

Ordered that the order of the Public Service Commission of the State of New York for the First District, dated April 20, 1920, directing the relator to extend its gas mains and services as aforesaid and the order of said Commission upon the rehearing, dated May 4, 1920, and the execution thereof and of the determination contained therein, be stayed pending the certiorari and until the further direction of this Court; and it is further

Ordered that until the hearing, decision and final disposition of the writ of certiorari in this proceeding the respondent, Lewis Nixon, [fol. 27a] constituting the Public Service Commission of the State of New York for the First District, his officers, agents, servants and employees and each and every other person acting under or by virtue of the commands of said Commission, are enjoined and restrained from in any way enforcing or attempting to enforce said orders or any of the provisions thereof against the relator; and it is further

Ordered that either party may apply to this Court for its further direction in the premises.

Enter.

G. V. M., J. S. C.

IN SUPREME COURT OF NEW YORK

WRIT OF CERTIORARI AND RETURN

The People of the State of New York to Lewis Nixon, constituting the Public Service Commission of the State of New York for the First District, Greeting:

Whereas, we have been informed by the duly verified petition of The Woodhaven Gas Light Company, that it is a corporation duly created and existing under the laws of the State of New York and carries on business in the County of Queens in the First Public Service District of the State of New York; that on April 20, 1920, after a hearing upon the motion of the Public Service Commission of the State of New York for the First District to inquire and determine [fol. 27b] mine whether an order should be made directing the petitioner to extend its gas mains, services and other apparatus to such extent as may be necessary to reasonably furnish gas to the residents of Springfield, Laurelton, Rosedale, Rosedale Terrace, St. Albans, Locust Manor, Locust Lawn, South Jamaica Place, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bayview Landing, the said Public Service Commission of the State of New York for the First District made an order directing the petitioner to extend its gas mains and services in such manner as may be required reasonably to serve with gas the

residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton in the Fourth Ward of the Borough of Queens in the City of New York, and that the construction of the said extension be completed and said extension be put in service on or before November 1, 1920; that thereafter the petitioner applied to the said Public Service Commission for a rehearing upon said application and the said Public Service Commission on May 4, 1920, made an order denying the application for a rehearing and that the petitioner is aggrieved by the determination of the said Public Service Commission and said determination is contrary to law and contrary to the evidence adduced on the hearing and that said orders of April 20, 1920, and May 4, 1920, if enforced,

1. Will constitute the taking of the property of the petitioner without due process of law in violation of the Constitutions of the United States and of the State of New York;

[fol. 28] 2. Will deny to the petitioner the equal protection of the law in violation of the Constitution of the United States;

3. Such orders are unauthorized by the Public Service Commissions Law or any other law of the State of New York.

And that being willing for certain causes to be certified of the proceedings, decision and action had by and before the said Public Service Commission relative to the extension of the petitioner's gas mains and services to the localities hereinbefore mentioned in the Fourth Ward of the Borough of Queens, City of New York,

Do hereby command that you certify and return under your hand to the office of the Clerk of the County of New York within twenty days after the service upon you of this writ, together with this writ, the following matters and facts:

All and singular the proceedings entitled "In the Matter of the hearing upon the motion of the Commission on the question of the extension of the gas mains of The Woodhaven Gas Light Company to such extent as may be necessary to serve the residents of Springfield, Laurelton and certain other localities in the Borough of Queens, City of New York," being Case No. 2376; all and singular the papers, affidavits, evidence and exhibits submitted and filed therein with the said Commission; all other evidence or information, if any, before the Commission or considered by it in arriving at its decision; if there be no such evidence or information a statement to that effect; a statement of the reasons for arriving at such decision and the method adopted by the Commission in so doing; a statement showing under what law or by virtue of what law or authority such determination [fol. 29] was made and any and all documents, records and papers, if any such there be, not embraced in the foregoing specifications, used by the Commission in making the determination aforesaid.

All this to the end that the proceedings, decision and action had by the said Public Service Commission of the State of New York for the First District relating to the extension of the gas mains and

services of The Woodhaven Gas Light Company in the Fourth Ward of the Borough of Queens in the City of New York, may be reviewed and corrected on the merits and that we may cause to be done what of right ought to be done.

Witness, Honorable George V. Mullan, one of the Justices of our Supreme Court of the County Court House in the County of New York, on this 19th day of July, 1920.

By the Court.

Wm. F. Schneider, Clerk. (Seal.) Cullen & Dykman,
Attorneys for Relator, 177 Montague Street, Brooklyn,
N. Y.

The foregoing writ is allowed this 16th day of July, 1920.

George V. Mullan, Justice of the Supreme Court, of the State
of New York.

[fol. 30] NEW YORK SUPREME COURT, COUNTY OF NEW YORK

[Title omitted]

RETURN TO WRIT OF CERTIORARI

Alfred M. Barrett as successor to Lewis Nixon, constituting the Public Service Commission of the State of New York for the First District, hereby respectfully certifies and returns to the writ of certiorari issued herein on the 19th day of July, 1920, a copy of which is hereto prefixed, as follows:

First. That on June 10, 1919, the Commission, by virtue of the provisions of the Public Service Commissions Law, adopted an order for hearing in its Case No. 2376, entitled, "In the Matter of the Hearing on the Motion of the Commission on the question of the extension of the gas mains of The Woodhaven Gas Light Company to such extent as may be necessary to serve residents of Springfield, [fol. 31] Laurelton and certain other localities in the Borough of Queens, City of New York," copy of which said order is hereto attached and marked Schedule "A," and that the relator herein, The Woodhaven Gas Light Company, was duly served with a copy of said order for hearing.

Second. That thereafter a hearing in said Case No. 2376 was held on June 26, 1919, and certain adjourned dates to and including March 29, 1920, when the said hearing was closed. That the relator herein appeared at said hearing and was represented by counsel and that representatives of civic organizations and property owners also appeared and took part in the proceedings. That testimony and exhibits were introduced at the hearing and the parties thereto were afforded a full opportunity to present such facts and arguments as they desired prior to the Commission's determination. That a rec-



CORRECTED TO SEPT 9, 1925

ord of the said hearing, including the testimony taken and the exhibits introduced therein, is hereto attached and marked schedule "B."

Third. That after a consideration of the testimony taken and the exhibits introduced at said hearing and of the matters appearing in the said record, the Commission on April 20, 1920, approved an opinion written by Deputy Commissioner Glennon a copy of which opinion (stating reasons for the determination arrived at) is hereto attached and marked Schedule "C," and adopted a final order in said Case No. 2376, a copy of which order is hereto attached and marked Schedule "D."

[fol. 32] Fourth. That by petition, verified April 29, 1920, the relator herein made application for a rehearing with respect to the matters determined by said final order, a copy of which petition is hereto attached and marked Schedule "E"; and that on May 4, 1920, the Commission adopted an order denying the said application for a rehearing, a copy of which order is hereto attached and marked Schedule "F".

Fifth. Referring to the paragraph designated "Seventh" of the petition for the writ of certiorari herein, this respondent denies, upon information and belief, the allegations contained in said paragraph.

Sixth. The following are the schedules annexed to this return and made a part hereof:

Schedule A. Copy of order for hearing, adopted June 10, 1919.

Schedule B. Copy of testimony, exhibits and proceedings on the hearing.

Schedule C. Copy of opinion of Deputy Commissioner Glennon, approved April 20, 1920.

Schedule D. Copy of final order, adopted April 20, 1920.

Schedule E. Copy of relator's petition for rehearing, verified April 29, 1920.

Schedule F. Copy of order denying application for rehearing, adopted May 4, 1920.

Seventh. That by consent of the parties hereto in order to shorten the record to the writ of certiorari herein, some exhibits have been omitted or abbreviated or statements concerning them substituted [fol. 33] and inserted herein in the place of such exhibits.

Eighth. That the foregoing statement and the papers therein referred to and hereto attached contain, except as stated in and by paragraph "Seventh" of this return, all and singular the record and proceedings of the respondent, Public Service Commission for the First District, had herein as demanded herein, with the decisions orders and all determinations thereon or therein, together with all the evidence submitted, as demanded in this proceeding and directed by statute.

In witness whereof, the respondent, Alfred M. Barrett, successor to Lewis Nixon, constituting the Public Service Commission of the State of New York for the First District, has caused the Commission's seal to be hereunto affixed and this return to be signed by said respondent and attested by the Secretary of said Commission this 29th day of March, 1921.

Alfred M. Barrett, constituting the Public Service Commission of the State of New York for the First District.

Attest: James B. Walker (Seal) Secretary of the Public Service Commission for the First District.

[fol. 34]

Exhibit to Return

Schedule A Annexed to Return to Writ of Certiorari

Before the Public Service Commission for the First District, No. 49 Lafayette Street, Borough of Manhattan, City of New York, on the 10th day of June, 1919.

Present: Hon. Lewis Nixon, Commissioner.

In the matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

ORDER IN CASE NO. 2376 SETTING HEARING

It is ordered that a hearing be held on the 26th day of June, 1919, in the hearing room of the Commission, No. 49 Lafayette Street, Borough of Manhattan, City of New York, at 2:30 o'clock in the afternoon, to inquire and determine whether an order should be made directing The Woodhaven Gas Light Company to extend its gas mains, services and other apparatus to such extent as may be necessary to reasonably furnish gas to the residents of Springfield, Laurelton, Rosedale, Rosedale Terrace, St. Albans, Locust Manor, [fol. 35] Locust Lawn, South Jamaica Place, Idlewild Park, Sheffield Manor, Springfield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bay View Landing, in the Borough of Queens, City of New York.

Further ordered that a notice of said hearing of not less than ten (10) days be given to said The Woodhaven Gas Light Company by service upon it either personally or by mail of a certified copy of this order.

By the Commission.

— — —, Secretary. (L. S.)

[fol. 36] SCHEDULE B, CONTAINING TESTIMONY AT HEARING BEFORE PUBLIC SERVICE COMMISSION, ANNEXED TO RETURN TO WRIT OF CERTIORARI

[Title omitted]

Before Edward J. Glennon, Deputy Commissioner.

New York City, June 26, 1919.

Met pursuant to notice at 3:15 o'clock p. m.

Appearances: Godfrey Goldmark, Esq., Counsel for the Public Service Commission for the First District (E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District); Messrs. Cullen & Dykman, Appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. [fol. 37] Crummev of Counsel); Edgar F. Hazelton, Esq., Post Office Building, Fulton Street, Jamaica, New York, appearing for the Citizens Central Gas Committee of the 4th Ward of the Borough of Queens; Messrs. Aron & Wise, 50 Pine Street, New York City, for the Hathron Homes Corporation and the Land Credit Corporation; J. H. Schneider, Esq., St. Albans, New York, in Person.

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains to Springfield, Laurelton and other localities.

Mr. Goldmark: Ready.

Mr. Dykman: Ready.

Mr. Hazelton: I represent the Citizens' Central Gas Committee.

Mr. Goldmark: This is a hearing upon a motion of the Commission to determine whether the Woodhaven Gas Company should extend its gas mains and service to such an extent as may be necessary to reasonably furnish gas to the residents of Springfield, Laurelton, Rosedale, Rosedale Terrace and certain other points which are specified in the order of the Commission. We will take this proceeding on a motion of the Commission. It arose as the result of complaints which have been filed. It has been the practice of the Commission to institute these hearings upon its own motion, rather than upon the complaint, because it gives more flexibility to the proceeding. [fol. 38] The fact is that this proceeding does originate from complaints which have been filed by the residents of these territories, or certain of them. The Public Service Law provides that the Commission has the power to order reasonable extensions of gas mains, so that the question at this time is whether or not the facts which may be presented to you will, it be reasonable for the Commission to order the extension of the gas mains, which is a question that the Commission must of necessity pass upon by testimony which is produced, although the Commission is glad to get the views of interested parties.

I would suggest in view of the fact that the citizens are represented by counsel, that they present such facts or arguments to the Com-

mission as they deem proper, and after the Commission has had an opportunity to examine these, it may desire to supplement them by their testimony before the company presents its case.

Mr. Hazleton: Mr. Chairman——

Deputy Commissioner Glennon: You appear for the petitioners?

Mr. Hazleton: Yes.

Mr. Goldmark: I would suggest, in the first instance, that the franchise of the company and the certificate of incorporation be deemed in evidence. There is no objection to that?

Mr. Hazleton: No objection.

Deputy Commissioner Glennon: The same will be received.

Mr. Goldmark: All the franchises.

Deputy Commissioner Glennon: Have you copies of them, or are they on file in the office?

Mr. Goldmark: These are copies from the files of the Commission. [fol. 39] Deputy Commissioner Glennon: It is consented that they be marked in evidence?

Mr. Hazleton: Surely.

Mr. Dykman: I have no objection to their being received in evidence. In order to keep the record straight, sir, I understand that there is no written petition before the Commission which we are called upon to answer in any way by any formal answer.

Mr. Goldmark: That is true.

The papers were received in evidence by reference and designated Commission's Exhibit No. 1 of this date.

Mr. Hazleton: I understand all that is going to be heard to-day is argument, a sort of introduction, as it were, to the matter, and that the Commission will consider the argument and we will have an opportunity to submit testimony later.

Mr. Goldmark: I did not say that, but, subject to the direction of the Commissioner, I have no objection to that except, as I say, the determination of the Commission must of necessity be based on testimony, not upon argument, because we have to make a record which will stand scrutiny.

Deputy Commissioner Glennon: In other words, you are not ready to produce testimony to-day?

Mr. Hazleton: I could produce testimony, maybe I will; that will all depend. I just wanted to make myself certain as to Mr. Goldmark's position.

Deputy Commissioner Glennon: I suggest that you produce such witnesses as you may have to-day, so that we may proceed and reach a speedy determination.

Mr. Hazleton: If it pleases your Honor, at this time I wish to state that I represent the Citizens' Central Gas Committee of the [fol. 40] 4th Ward of the Borough of Queens Organization, whose name shows its purpose. It was organized to fight this movement, and the movement is by no means a new one, but extends over a period of upwards of 15 years. Now, the territory concerned is known as Springfield; that is what it is commonly known as, and

it is part of the old township of Jamaica, immediately adjoining Jamaica on the eastern side, and includes sections known as Jamaica, South Springfield, St. Albans, Rosedale. It has a population of slightly over 6,000 people and consists of 1,500 homes. The transit facilities are good. It is served by three divisions of the Long Island Railroad, the Far Rockaway, the Long Beach and the Montauk Division. It is also served by two trolley lines and by water, telephone and electricity.

So some public utility corporation has seen fit to enter the territory. Now, land out there is not so dear, and there is a strong desire upon the part of builders and distributors to enter that section and construct and erect homes if there existed gas, but your Honor can naturally see what argument a woman is going to have toward purchasing a home when she is confronted with the proposition of starting a wood or coal fire, or using an oil stove.

I can safely say that there is one man in this room who, if gas was extended into that section, would immediately proceed with the construction of 22 houses, and there are other builders who would immediately go in there; so I say that this is one of the small means, at least, by which the housing situation could be assisted.

[fol. 41] Now, I might also state that by reason of there not being any gas there there are no sciences, no classes in domestic science at the schools, in the public schools, and consequently the children have to be necessarily deprived of that branch of their education. Those classes cannot be conducted without gas, and consequently are not.

Now, the main at the present time extends to what is known as the ear barn in the Cedar Manor section, and what we ask, I believe, and what is stated as the route that would be followed by the gas company if it undertook to install gas, would be along the Merrick Road out to Springfield and out to Rosedale. That is where the main trunk would run with the lateral lines feeding into it.

I do not believe that the cost of installing gas to the gas company is really a relevant matter. I believe that that concern, or know that that concern, as well as you do, is a corporation whose primary duty, whose essential duty is serving the people; secondly, serving them at a profit. That is what I believe to be the duty of that corporation, and therefore I believe the real question that is presented to your Honor is: do the residents of that section want gas, and what is the number of residents?

In asking that gas be sent into Springfield and Rosedale and so forth, we are not so unreasonable as to ask that it be extended into what is known as the dead ends of those sections; no, not at all. We only ask that it be extended into built up sections.

As I say, I do not believe the cost of the installation of it is relevant. I say that because the gas company has submitted a letter, a communication, in which it states that to install service there would [fol. 42] necessitate its incurring an expense of \$393,931.00. Yes, quite right, if they want to extend it into the sections which they mention in their letter, which is absolutely ridiculous. I believe that

is done only for the purpose of making the proceeding, or installation of it, appear grossly excessive.

They include in their estimate the extension of gas into what is known as the Bay View Land. My gracious! That is away down on Jamaica Bay. All they could do would be to feed the gas to the fishes. Jamaica Gardens—that is not included in our request at all. Hickview Park. I have lived in Queens County all my entire life, and never heard of such a place as Hickview Park. Idlewild Park; that is an old, abandoned shack on a sort of peninsula standing out in Jamaica Bay, abandoned by the man who erected it, and is used occasionally for duck shooting. Sheffield Manor; that is not included in our request at all. I know not of it. Perhaps I am grossly ignorant as to the names of those places. I think I would have heard of them if they existed. I am glad to see Commissioner Barrett sitting here, because I understand that recently he has been over that section, endeavoring to give us roads out there. That is before he left the service of the county.

They included Springfield Park in there. That is not requested by us. Locust Lawn, Locust Manor; they say they would need 95 miles of pipe, 95 miles to install it in these sections; they undoubtedly would. But I want to say that their entire service in Woodhaven, the entire service of this company now only consists of about 95 miles. I believe it is 95 miles of piping.

[fol. 43] But we do not ask anything like that. We ask that the gas be brought into the sections which are built up, not the dead ends in which they want to bring it.

Mr. Goldmark: Will you just specify what sections you want it brought into?

Mr. Hazleton: Yes, I will. We have maps which I will state will be introduced and marked, which will enlighten the Commission better than anything I can say on it. I can state that the Engineer of the Commission made an investigation and followed the proposed route, the route proposed by the company, with the exclusion of Rosedale; we told him we did not see the advisability of doing that, because Rosedale is one of the sections for which we asked gas, just as much as any other section there. He excluded Rosedale in his estimate and arrived at a cost of approximately \$132,000. If he were to include Rosedale it would come up, I should say, to about \$225,000.

So this grossly excessive estimate of the gas company is absolutely absurd, if they were to extend the gas where they mention; it would be of no avail to any one.

Now, I might say further, to show the good faith of the people in making this request, we have sent applications to the different residents in the past couple of days, or since this matter—we have been informed that this hearing was to be held, and we have obtained 982 promises to take gas. Cards written and signed by the people, and we have them here to submit to your Honor for your examination; 982 at the present time. Of course, we will get many

more. Everybody there wants gas. There may be an occasional [fol. 44] person, I might say, perhaps in Hicks Park, who does not know how to use it. I do not know of Hicks Park.

I might also say that a Mr. White, who, I believe, is a general manager, or assistant general manager—he is connected with the gas company, anyway, in some capacity which I believe Mr. Dykman will know—

Mr. Crumney: Superintendent of the Distribution System.

Mr. Hazleton: Superintendent of the Distribution System. Well, he is connected with the gas company anyway, and two years ago, in 1917, he was conferred with, he was communicated with, and he attended several meetings of the Gas Committee, and he gave them his absolute promise, led them to believe that gas would be led into Springfield and into that section, and that as a matter of fact the pipes, for the purpose of installing it were delivered to the ground in the vicinity of the Jamaica Station, and they stand there, occupying several lots of ground, to this day, with a watchman watching it. I do not know whether anybody is going to steal them, but they have a watchman, a fellow without the power of either leg, who is around on crutches, is watching the pipes that weigh several thousand pounds each. Those pipes have been moved there, have been delivered for that purpose, have been permitted to remain there and rust.

Mr. White gave his absolute word. I would like to read to your Honor the report of this Gas Committee telling of their interview with Mr. White, in which they said:

"Report of the Gas Committee

Your committee is glad to be able to report considerable progress [fol. 45] during the past 30 days in reference to extension for gas to this community.

We have a letter from the Gas Company which I will read.

This letter was given to me by Mr. John T. White, Superintendent of Street Department of the Brooklyn Union Gas Company in person. Mr. White explained to me the existing conditions and the cause of delay of this extension. He also at this conference promised to attend our next Committee meeting which he did, held at my home Wednesday night, May 2nd.

Mr. White, accompanied by Mr. Waldron, another representative of the Gas Company attended this meeting. Mr. White explained in detail that the pipe for this extension had been ordered last November. Owing to the shortage of freight cars, and congestion of freight the foundry has been unable to deliver this pipe. He states, however, some of it has been received and delivered to Jamaica. They are expecting additional deliveries at any time.

He also stated that the lead necessary to make this extension has been ordered from Omaha, Nebraska. He states that the concern from whom they must buy their lead, as it is a particular kind, will not accept orders for over 50 tons at a time and then will not

specify any date of delivery. It is necessary to have seventy-five tons of this metal to make the extension to Springfield.

The matter of yarn they will be able to handle, picking it up in small quantities, even though it has tripled in price. He states [fol. 46] they are constantly after these concerns from whom they buy this metal to hurry deliveries, and that as soon as sufficient pipe is received to bring the main line down Merrick Road to Springfield Avenue, they will begin work, and complete it as soon as possible.

He states he has about one thousand laborers in his department but at the present time over one-half of these men have been detailed on eight hour shifts, to guard the various gas plants and property of their company. For this reason he will be unable to complete the work as quickly as if he had his full force of men." Very fine!

Mr. Dykman: Is that in the letter?

Mr. Hazleton: No, that is my own comment. (Reading:)

"Mr. White states to us that the President of the Brooklyn Union Gas Company called him into his office a short while ago and gave him an order to make this extension as soon as material had been received. So you see Mr. White had the order from the company and will proceed as soon as he has anything to proceed with. He states under present conditions it would take about 60 days to install this service.

I am sure I have voiced the sentiments of the entire committee by assuring the association that Springfield is going to get gas just as soon as conditions which we all know at the present are out of the ordinary adjust themselves."

[fol. 47] Mr. Hazleton: We have been waiting ever since to realize the consummation of that promise, but instead of coming nearer to its realization, I believe we are about to be opposed. I may be anticipating, but expect, even, that his promise will be denied. However, sir, let me just repeat, endeavoring to press home this point, that there are over 6,000 people in the built-up section, that we have 982 signed applications now, promises to take gas, that there are over 1,500 houses in that section that builders will go into it as soon as we get gas there, and that the people absolutely want it, therefore, I can confidently say that they are entitled to get it. There is a demand for it, and this corporation that serves the public I think should be directed to extend its lines down into that section.

Now, gentlemen, I have just endeavored to present the concrete facts to you here of this situation. I believe I have done it. I thank you.

Deputy Commissioner Glennon: Does counsel for the gas company wish to be heard on the proposition?

Mr. Dykman: No, sir.

Deputy Commissioner Glennon: Possibly there are some points we can agree on, and consequently narrow the issue.

Mr. Dykman: Why, I do not see any point in taking up your time now, sir, with a statement. We are prepared to meet the proof.

I understand from what Mr. Goldmark says there is evidence to be introduced.

Mr. Hazleton: I think that this matter should not be proceeded with as if it were, as if we were trying here a complaint made against the defendant; something like that. It is a matter which we are [fol. 48] all interested in, the public, sir, and I believe the gas company should be at least just as much interested in serving the people or the public as the Commission, I, or anybody else. I think they should, at this time, at least, explain their attitude in the matter, because they may be willing to do it, and, therefore, it would be absolutely unnecessary for us to submit any proof to show them why.

Deputy Commissioner Glennon: Are you willing to state?

Mr. Dykman: I am not willing to be tempted, because the only orderly way I know of arriving at any result is to try it as if it were a complaint; the only satisfactory way.

Mr. Hazleton: Might I state that I always understand if we are trying according to a cause, a legal cause, that the defendant in a civil matter opens his case before any testimony is taken after the plaintiff opens his.

Mr. Dykman: Sometimes he waives his opening. If he wants to know what I am doing, I waive it.

Deputy Commissioner Glennon: I think we are wasting a lot of time, as long as counsel is unwilling to make a statement at this time. If you have any witnesses you might call them.

Mr. Hazleton: But I do not think counsel for the gas company should be permitted to waive his opening.

Deputy Commissioner Glennon: Well, we can bear that in mind at some future time. Proceed with the testimony if you have any.

Mr. Hazleton: I have. I will call one witness today, and we will offer his testimony on general matters. I will call Mr. Schaberhorn to the stand.

[fol. 49] WILLIAM H. SCHABERHORN, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Now, Mr. Schaberhorn, what is your address at present?

A. My business address, or my residence?

Q. I asked for your address, your home address; where do you live?

A. No. 1 Queens Boulevard, Forest Hill.

Q. Now, Mr. Schaberhorn, that is not in the section concerned in this proceeding, is it?

A. No, sir; it is not.

Q. But you did reside in the section involved in this proceeding until when?

A. Until about four years ago.

Q. How long did you reside there?

A. Three years.

Q. And you are in business in that section now?

A. I am.

Q. Whereabouts in Springfield?

A. The junction of Springfield Avenue and Park Avenue, which is at the railroad station.

Q. And have been there for how long a period of time?

A. Twelve years.

Q. That business that you have conducted is what?

A. Principally real estate.

Q. You are a member of the Central Gas Committee of the 4th Ward, who are being heard in this matter?

A. I am.

Q. How long have you been a member of the committee?

A. Since the committee was formed, about four months ago.

Q. Before that time were you on any committee relative to having the gas installed in this section?

A. Yes, I was a member of a committee appointed by the Springfield Citizens Association.

[fol. 50] Q. For how long were you a member of that committee?

A. I was a member of that committee for about two years.

Q. Did you ever have a talk with Mr. White?

A. I did.

Q. You know Mr. White?

A. I do.

Q. Did you go there, or did you converse with him in accordance with directions or instructions given you by the Springfield Citizens Association, or Civic Association?

A. I did.

Q. Now, where was it that you had that conversation with him?

A. I had several conversations with Mr. White.

Q. The first?

A. The first was at the office of the Brooklyn Union Gas Company in Montague Street, Brooklyn.

Q. You called there relative to this matter referred to?

A. Yes, sir.

Q. He took it up with you?

A. Yes, sir.

Q. When was this first conversation on that?

A. Some time in the fall of 1916.

Q. Was any one present with you when you had that first conversation?

A. There were four gentlemen besides myself.

Q. Can you give us the names of those four other gentlemen?

A. Yes, sir; they are Victor Berthold, Will C. Izor, William N. Decker, now deceased, William H. Nostrand. I have said there were four besides myself, but there was another one, William H. Mills five.

Q. What was that conversation, as you are able to recall it?

A. We were escorted into the office of the gas company. Mr. White was present, and some other officials of the gas company; I do not recall the names, of course.

Mr. Dykman: I object to that characterization of "officials."
[fol. 51] Mr. Hazleton: Just one moment.

Deputy Commissioner Glennon: Just say some other men in the gas company office.

The Witness: Some other men in the gas company's office.

By Mr. Hazleton:

Q. I am asking you for the conversation. Direct your attention toward that alone.

A. We told Mr. White, of the gas company, that we came to them with reference to obtaining the extension of the mains to Springfield. They told us that they had been long considering the advisability of running gas to Springfield; that they would give us the extension. They had counted the number of houses, had figured out the cost, and they were about ready to make the extension. I said, "We will have to go back and report to our people something definite. Are we to understand that this is a definite promise of an extension?" They said, "Well, the condition is this: We do not want you to go out of here and tell the other communities, such communities as Rosedale, Jamaica Junction and St. Albans that we are going to make this extension, because if you do that, we will have all those fellows on our necks, and they will also insist on an extension, and we can not afford to make that extension at the present time." I said, "About when could we expect this," and was told that in probably six months.

By Deputy Commissioner Glennon:

Q. Was that six months to begin the work, or that you would have gas in there in six months?

A. That we would have the gas. At that same interview we were [fol. 52] told that the money for that extension had been set aside in the budget of the gas company.

By Mr. Hazleton:

Q. Does that complete the conversation?

A. That is about the main points.

Q. When was the second?

By Mr. Goldmark:

Q. What points did you ask the extension to at that time?

A. At that time we asked for extension—in fact, we were told where the extension would come to. We asked for an extension covering Springfield. We were told what the extension would be. We were told it was coming down New York Avenue. It would have to start at the car barns in Cedar Manor, because the gas company made all their arrangements to start from that particular point. They would come down New York Avenue to Locust Avenue, across Locust Avenue to Merrick Road, and out Springfield Avenue, and from that

point they would run smaller lines, branch out to take in the houses on the side streets.

By Mr. Hazleton:

Q. On what side streets—in Springfield?

A. In Springfield, and on the way to Springfield.

Q. That would not take in Rosedale?

A. That would not take in Rosedale.

Q. Or St. Albans?

A. Or St. Albans.

Q. Would it take in Jamaica south?

A. It would take in Jamaica south.

Q. Then what they told you at that time was in substance that they [fol. 53] would extend the gas into Springfield as we are concerned with it in this proceeding?

A. As we are concerned with it in this proceeding?

Q. Yes.

A. No, we have gone further in this proceeding.

Q. Just what were the boundaries of Springfield as it was understood in that conversation?

Mr. Dykman: How does he know that?

Deputy Commissioner Glennon: Let him answer what are the boundaries of Springfield.

By Mr. Hazleton:

Q. If they were mentioned at that time?

A. The point that they were supposed to bring it to, or said they would bring it to was, at least, Springfield Avenue.

Q. I see.

A. Then to run in branches to take in houses within what was considered a fair radius of the main line.

Q. Now, when was it that you had the second talk with Mr. White?

A. It was probably—it is very hard to remember the date.

Q. To the best of your recollection?

A. Oh, it was several months after that. We went away and reported to the Association what had happened. It sort of had a Jubilee celebration, absolutely sure that that gas was coming down, and everybody was happy; everybody was told not to spread the report, because if you did spread the report, the gas company might change their minds. But we waited then for several months, and when it did not come the Association started to jump on us and to say, "What about that gas? We have not been able to cook with it yet; we would like to start some cooking." So we started.

[fol. 54] Q. You say the conversation was about several months thereafter?

A. Several months thereafter.

Q. Where was that second conversation had?

A. That was held in the home of Mr. Will C. Izor at Laurelton.

By Deputy Commissioner Glennon:

Q. With the same Mr. White?

A. With the same Mr. White; yes, sir.

Q. What was said?

Mr. Hazleton: May I ask who was present at this conversation?
Deputy Commissioner Glennon: Surely.

A. Dr. Berthold, Will C. Izor.

By Deputy Commissioner Glennon:

Q. The same gentlemen who appeared at the gas company?

A. Let me see; I think they were all at that meeting with the exception of Mr. Decker—no, Mr. Decker was there; with the exception of—

Q. Mills?

A. Mills; I am not sure whether Mr. Mills was there, but I think he was not.

By Mr. Hazleton:

Q. What was said at that conversation?

A. Mr. White said he was glad of the opportunity to come to Springfield because of the mission that he came on, and that the conditions were such that they had not been able to get time to carry out their promise or to start their work, but that they were going right ahead with the work; that he had—

[fol. 55] By Deputy Commissioner Glennon:

Q. Did he say when they were going ahead?

A. Did he say when?

Q. At that time, I mean; did he express any opinion as to when they might start work, anything of that character; that is, if you recollect?

A. Yes, sir. I am trying to think of the particular point. I cannot recall, of course, the exact substance that he put it in, but we were given the assurance that the work was about ready to start. We were assured that within two or three months at the very latest the work would be under way.

By Mr. Hazleton:

Q. What was the rest of the talk?

A. We said, "Mr. White, how do we know—is it perfectly safe for us to go out to our people and say that we are going to get gas in Springfield," and he said, "Gentlemen, I want to meet you; I will probably meet you in the years to come. You can depend that I would not tell you, make these promises to you unless I knew that they would be absolutely fulfilled."

Q. Did you complete that conversation, so far as you are able to recall it?

A. That completed the main points of the conversation.

Q. All right, when was the third talk that you had with Mr. White?

Deputy Commissioner Glennon: Just about when?

By Mr. Hazleton:

Q. About when?

A. About when?

Q. How long after that second talk was it; two months or three months?

A. Now wait—no, that ended the talks that I had with Mr. White, [fol. 56] that second talk; after that I simply heard his speech.

Q. Where did you hear his speech?

A. I heard his speech in Springfield; in this year, I believe it was, in the month of March.

By Deputy Commissioner Glennon:

Q. 1917, of this year?

A. This year.

Q. 1919?

A. Yes, sir.

By Mr. Hazleton:

Q. That was about the first time that you heard him talk upon the gas subject since your second conversation about which you have testified?

A. Yes, sir.

Q. Was that held at a meeting of the Civic Association or Associations?

A. Yes; that was held by the Springfield Citizens' Association.

Q. What did he say there then?

A. I thought it might be interesting to know how that particular meeting occurred.

Q. What brought about that meeting, then? A. The people they have got restless about the gas, and so we had since then the letter that you previously read of Mr. Izor. Mr. Izor had several conferences that I did not attend, that brought up that letter in 1917. Nothing was done since 1917 up to the spring of this year. This meeting was brought about really by the Springfield Civic Association keeping on demanding what had become of our gas pipes. We had been told that they had been delivered at Jamaica, and one—Mr. Holmes from Laurelton—

[fol. 57] By Deputy Commissioner Glennon:

Q. Did you write to him yourself, the Association, is that what brought him down there?

A. At this meeting?

Q. Yes.

A. No; I am trying to explain how it came about.

Q. Try to make it brief how he came down.

A. On an invitation of one Mr. Holmes, who was connected with the Far Rockaway Gas Company, or an accountant of the Far Rockaway Gas Company.

By Mr. Hazleton:

Q. He lives in Laurelton?

A. He lives in Laurelton.

Q. Which is included in Springfield?

A. Which is included in Springfield.

Q. What was his speech?

By Deputy Commissioner Glennon:

Q. Was it a public address he made in a hall, or in the open air?

A. It was a public address in a hall.

Q. In the evening, I suppose?

A. In the evening.

Q. All the people in that section were there, met him?

A. Yes.

Q. What did he say, briefly?

A. He said that the gas company at the present time could not see its way clear to make an extension to any part of that territory. He recited—he had a memoranda of the figures and costs, and also a map. He put that map on the stage and outlined the section which included miles and miles of territory, which we are not interested in, because it covers miles and miles of low land, water land, all foul [fol. 58] land. He said, "We will not be able to make any extensions into this territory until the cost of material and the cost of labor is reduced to pre-war times."

By Mr. Hazleton:

Q. He said that last March?

A. He said that last March.

Q. Did he tell you when he expected to be able to do it?

A. No.

Q. What is the population of this section for which you requested gas, if you know?

Mr. Dykman: I object to that.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

A. About 6,000.

By Mr. Hazleton:

Q. How do you know that?

A. From information, obtained after being years in that locality and canvasses. For instance, R. G. Dun & Co. give the population at something around 5,000.

Q. You made personal investigations, did you not?

A. Yes, sir.

Q. And calculations?

A. Yes.

Deputy Commissioner Glennon: That will be brought out later by counsel.

By Mr. Hazleton:

Q. How many houses are in this section, if you know?

[fol. 59] Mr. Dykman: I do not think, sir, that the section should be more thoroughly defined than it is in the question.

Mr. Hazleton: We are going to.

Mr. Dykman: That is not the question.

Q. You referred to the question which we are concerned with?

Deputy Commissioner Glennon: The question mentioned in the petition.

Mr. Dykman: There is no petition.

Deputy Commissioner Glennon: I mean in the original application.

Mr. Hazleton: Yes, I will have him describe definitely the section with which we are concerned.

Deputy Commissioner Glennon: Which will appear on your map.

Mr. Dykman: May I ask that the witness do that now?

Deputy Commissioner Glennon: Yes. Have you got the map there handy?

Mr. Dykman: Before he talks about population.

Mr. Hazleton: I will do that.

By Mr. Hazelton:

Q. Have you brought here a map showing the section which you say this committee asks gas to be let into?

A. I have; yes, sir.

Q. Are these the maps (referring to maps)?

A. Yes, sir, those are the maps.

Deputy Commissioner Glennon: Is there any objection to having that map in evidence?

[fol. 60] Mr. Dykman: None whatever.

Mr. Hazleton: I will introduce that in evidence, then.

Deputy Commissioner Glennon: Have you penciled off the sections which you have described?

Mr. Hazleton: Yes.

The Witness: That section is not penciled off.

Mr. Hazleton: Is this a map also (indicating)?

The Witness: That map goes with that one.

Mr. Hazleton: This second map is also offered in evidence.

Deputy Commissioner Glennon: If there is no objection, they will be received in evidence.

Mr. Dykman: No objection.

The papers were received in evidence and marked Complainant's Exhibits Nos. 2 and 3 of this date.

By Mr. Hazleton:

Q. Now, I show you Petitioners' Exhibit No. 2—

Deputy Commissioner Glennon: Is there a petitioner here? The complainants.

Mr. Hazleton: You understand I am using that as a term of convenience.

Deputy Commissioner Glennon: You are getting me in the habit of using it also.

Q. Will you kindly state from that map, or describe from that map, if you can, the territory that is involved in the request for gas?

[fol. 61] Deputy Commissioner Glennon: I do not think it is a matter of necessity to open the map at this time.

Mr. Hazleton: I want to do just what you desire me to do.

Deputy Commissioner Glennon: You were asking him about how many people resided there in the neighborhood of the territory in which you desire gas mains; and also about how many houses there were in that neighborhood.

Mr. Hazleton: I might state that that map was carefully prepared and marked off and the parts that we did not ask gas to be led to, are pasted over.

The Witness: No, they are not.

By Mr. Hazleton:

Q. How is it prepared?

A. This map is simply a map; I have taken and described in this paper here the questions and the number of houses which can be checked over and thus verified on this map.

Deputy Commissioner Glennon: Do you desire to have that marked in evidence to accompany Exhibits 2 and 3?

Mr. Hazleton: Yes.

Q. Have you brought with you here, Mr. Schaberhorn, a statement which refers to the maps which have been introduced in evidence here in this case, and which describes the sections into which this Committee asks gas to be led?

A. I have.

Deputy Commissioner Glennon: I do not think there will be any objection to that.

[fol. 62] Mr. Dykman: I would like to see it. (Examining paper.)

Mr. Hazleton: I will offer it in evidence.

Mr. Dykman: May I ask the witness a question?

Deputy Commissioner Glennon: Yes, certainly.

By Mr. Dykman:

Q. Are these figures on the right-hand side of the column—what are they; what do they purport to be?

A. Those figures on the right-hand are houses. I would like to mark that with pen and ink, that word "houses" so that there cannot be any mistake.

Deputy Commissioner Glennon: Yes, we understand.

Q. I do not know how this is offered. Is it offered as a result of a count made by you personally; did you go along these places and count the houses?

A. Yes, sir.

Q. Took it down on this?

A. Yes, sir.

Mr. Dykman: I have no objection to it, sir without, however, conceding that any of the streets are actually public highways, or that it is accurate; simply as the witness counted the houses.

Deputy Commissioner Glennon: Yes, it will be received in that way.

The paper was received in evidence and marked Complainants' Exhibit No. 4 of this date.

Mr. Hazleton: Now, in view of the maps being offered in evidence [fol. 63] together with this statement does the Commissioner wish me to have him further describe the territory?

Deputy Commissioner Glennon: No, it is not necessary, I do not believe.

By Deputy Commissioner Glennon:

Q. Are there any vacant houses down there in that territory?

A. I have got people who are paying \$30 a month for garages to put furniture in.

Deputy Commissioner Glennon: Is there anything further?

By Mr. Hazleton:

Q. There are no vacant houses down there?

A. No, sir, there are not.

Deputy Commissioner Glennon: You made a statement about some gas pipe being stored down there.

Mr. Hazleton: I will take up those points if you will permit me your Honor. Of course I will not complete his entire examination today.

Deputy Commissioner Glennon: That will be all right.

Q. Now, the Commissioner has made inquiry relative to the gas pipe being delivered at some time to Jamaica for the purpose of leading this gas into Springfield; was that done?

A. There was—

Q. Just yes or no; what was done?

A. I do not quite get your question.

Q. Was any gas pipe delivered for the purpose of going ahead with this work?

A. There was gas pipe delivered at Jamaica.

[fol. 64] Q. Did you have a talk with Mr. White as to what those pipes were delivered there for?

A. Yes.

Q. What did he say they were delivered there for?

A. They were delivered for the purpose of making an extension to Springfield.

Q. As a matter of fact there were several lots filled with these pipes and are at present?

A. There are.

Q. You have seen them?

A. I have.

By Deputy Commissioner Glennon:

Q. Do you know how much pipe is there about? Did he tell you at any time?

A. No, he did not tell me.

Q. What would you say; was there a considerable amount of pipe there, gas pipe?

A. I should say that there was a very considerable amount of gas pipe. It covers a territory of several blocks square, and the gas pipes mounted in some places to a distance of eight feet high. Of course——

Deputy Commissioner Glennon: How long has the pipe been stored? You might bring that out.

By Mr. Hazleton:

Q. How long has the pipe been stored?

A. For a period of over two years.

Q. What is this pipe—what is the diameter of this pipe?

A. There are different size pipes. Some of them I assume to be eight inches; some of them look as though they might be six inches; even as though they might be as small as four inches.

[fol. 65] Q. Pipes for the principal gas mains and also for the laterals?

A. We were assured that they were pipes to make the extension.

Q. Were you assured or was it stated to you that sufficient pipe had been delivered there to make the extension?

A. It was not stated that sufficient had been.

Q. Now, those houses that you have mentioned as being in Springfield, what kind of houses are they, relative to the value of construction, etc., rentals?

A. Springfield and that entire section is not a community of renters. It is a community of owners. Practically everybody owns their own home. When I say practically everybody, it is fully ninety-five per cent.

Q. What would you say the average value of the houses was?

A. The average value of the houses, it is hard to place, because it varies greatly. In one section like Jamaica Junction section the average value is about \$3,000, and in a section like the Addisleigh Section, and the Laurelton Section, the average value is probably \$12,000. In the sections in the heart of Springfield the average value is probably about \$6,500.

Q. In St. Albans?

A. In St. Albans, outside of the Addisleigh Section, they average about \$6,500.

Q. Have you made inquiry as to whether or not the residents of this section would use gas if it were installed there?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Have you some applications to offer in evidence?

Mr. Hazleton: I was asking this question preparatory to that. [fol. 66] Deputy Commissioner Glennon: Was this the gentleman who had charge of them?

Mr. Hazleton: Yes, this is the gentleman who had charge of them.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

Deputy Commissioner Glennon: Yes or no; have you made inquiries?

A. Yes.

By Mr. Hazleton:

Q. Did you get certain cards signed?

A. I did.

Q. Now I show you the cards and ask you if those are the cards that you had signed?

A. Yes, those are the cards.

Q. You personally had these signed?

A. Yes.

Mr. Goldmark: Under his direction?

The Witness: Under my direction.

Q. You know the names of the people who signed them, and their residence?

A. Yes, practically all of them. I would not say that I know every person in that section.

Q. Those are cards returned to you relative to the inquiries that you were making?

A. Yes, sir.

Mr. Hazleton: I offer these cards in evidence.

Mr. Dykman: May I see them? (Handing cards to counsel.)

Deputy Commissioner Glennon: I would suggest inasmuch as you

say you are going to recall this witness at the next hearing, that you let him examine the cards which he personally secured.

[fol. 67] Mr. Hazleton: That would be the usual method, but I understand that you wanted them just offered.

Deputy Commissioner Glennon: I can state to counsel that I will admit the cards if they are properly proven.

Mr. Dykman: Do I understand your Honor in regard to these cards that are offered, that your action is postponed until we have had a chance to look at them?

Deputy Commissioner Glennon: Yes, and also I might state further I will admit them in evidence provided they are properly proved and shown that they were signed by the people who resided out there. That will be the ruling, and it may facilitate matters and save time if you would examine them and take your objection if you desire to have one.

Mr. Dykman: A possible objection left open to us after examination?

Deputy Commissioner Glennon: Yes.

By Mr. Hazleton:

Q. How was this inquiry made by mail or personal house to house canvass?

A. A house to house canvass.

Mr. Hazleton: I wish to adjourn my examination of the witness at this point.

By Deputy Commissioner Glennon:

Q. How long have you had electric light out there?

A. We have had electric light for—

Q. About how long in round numbers?

A. About ten years.

[fol. 68] Q. At least ten years or possibly more?

A. At least ten years or possibly more.

Q. At any rate, you have had it upwards of ten years?

A. Yes, sir.

By Mr. Hazleton:

Q. How long have you had water out there?

A. Upwards of 15 years.

Q. How long have you had telephone service out there?

A. Upward of 12 years.

Mr. Hazleton: Now, I will adjourn with the permission of your Honor, the examination of this witness until another hearing, and I will then also introduce other testimony and other witnesses.

Deputy Commissioner Glennon: Have you the gentleman present who is willing to build the houses in the neighborhood?

Mr. Hazleton: He (referring to the witness) will build, I believe, twenty-two.

By Deputy Commissioner Glennon:

Q. What seems to be the chief objection out in that neighborhood to building houses?

A. The chief objection is the lack of gas. I personally have sold a large number of lots to various people who are engaged in building, but many of these people when they have investigated the matter thoroughly and found out what a serious objection it was owing to the fact there was no gas, refused to build. If it is permissible to mention names I would be glad to mention the names of the builders who have bought lots from me who now refuse to build because there is no gas.

Mr. Hazleton: Does the Commissioner desire the names?
[fol. 69] In other words, it is your idea that if you had gas out in that neighborhood that it would tend to help along the construction of building?

A. Yes, sir, that is my absolute idea. I am getting the proof brought home to me every day from the fact that I have a real estate business, and people come in there and not knowing that there is no gas, we take them out and show them houses; I have even had deposits on houses, and they said "Will you attend to having the gas meter put in?" And I would say to the people, "There is no gas," and they would demand their money back; their deposit money. Instances of that kind happen all the time. People are disgusted that there is no gas there. They even go out to a town seventeen miles further out where there is gas, and put up with the inconvenience of train service to the further distance just for the purpose of getting gas. And builders have spoken to me time after time refusing to come into Springfield, refusing to build in our territory until we get gas.

Q. What is the commutation rate from there?

A. \$7.10 to Flatbush Avenue and \$9.10 to the Pennsylvania Station. The running time is 26 minutes.

Q. What is the station?

A. In that territory that we ask for gas, that territory takes in the Cedar Manor, Locust Avenue Station, Higbie Avenue Station, Laurelton Station, Rosedale Station, Springfield Station and the St. Albans Station.

By Mr. Goldmark:

Q. I suppose particularly residences?

A. Particularly residences. Practically everybody that lives in the town is a commuter having business somewhere in New York City.

[fol. 70] Q. With his family?

A. All families; all men of families; very few boarders; very few houses where they take boarders in the section.

Q. Are they going to give gas for lighting, cooking or heating?

A. For the three. Many houses they would use it for lighting and cooking.

By Mr. Hazleton:

Q. And heating?

A. And for heating purposes. In some houses they would simply use it for cooking and heating.

By Mr. Goldmark:

Q. Would you be able to say what the percentage was out there that keeps servants; do the people out there keep servants?

A. Many of them do; not all, but the majority do not.

Q. Is there any difficulty in keeping help because of the absence of gas?

A. Absolutely, no question about it. You gentlemen——

Deputy Commissioner Glennon: I think that will be conceded.

The Witness: You cannot keep servants there.

Mr. Hazleton: Commissioner Barrett is personally acquainted with that section and he knows it well.

Mr. Goldmark: But we have to make a record here.

Mr. Hazleton: Yes, I understand that perfectly well.

Deputy Commissioner Glennon: As a matter of fact, I am handling this proceeding and I have to know conditions myself.

[fol. 171] Mr. Hazleton: I will introduce evidence upon all those points which both your Honor and counsel to the Commission have indicated after an extended hearing for additional testimony.

Mr. Goldmark: I am indicating the line of testimony which I think is material.

Mr. Hazleton: Yes, I understand.

Deputy Commissioner Glennon: Are there any questions of any other witnesses that you have today which you wish to examine?

Mr. Hazleton: No, I do not want to examine any other witnesses today.

Deputy Commissioner Glennon: When do you suggest that we adjourn this matter over to. A week from today is the 3rd of July. If you wish to have the hearing that day it would be better to have the hearing in the morning because the people in your neighborhood would want to celebrate the 4th.

Mr. Hazleton: I would like to have it before the 4th. You see, Mr. Commissioner, if I decided it would be advisable for me to be absolutely frank here and proceed right away with everything, and let the Commission have all that I can give it at this time, I would do it, but I am presented here with a corporation which is absolutely not frank.

Mr. Dykman: Oh, I object to that.

Mr. Hazleton: I do not know its attitude.

Mr. Dykman: I do not want to get into a fight the first day, but I resent that.

Mr. Hazleton: I do not want to get into a fight at all.

[fol. 72] Mr. Dykman: But it looks as if I would if you misrepresent me.

Mr. Hazleton: I advise you not to.

Mr. Dykman: You do?

Mr. Hazleton: They do not want it in the morning, because the people inform me that it is next to impossible for them to get over here in the morning, and it makes it very inconvenient for them.

Deputy Commissioner Glennon: You are not going to call them all as witnesses, are you?

Mr. Hazleton: Indeed not, but they would like to be here at the hearings.

Deputy Commissioner Glennon: I will take judicial notice of the fact that they have been here.

Mr. Hazleton: I suppose there are things they would like to hear just the same as you would if you came from that section, whether a witness or not.

Deputy Commissioner Glennon: I think they are well represented by counsel.

Mr. Hazleton: I thank you.

Deputy Commissioner Glennon: I think we had better adjourn this case to Monday, as long as you wish to have the hearing in the afternoon; Monday, July 7th.

Mr. Hazleton: I have another matter on Monday and I would rather have it on Tuesday, that would be the 8th.

Deputy Commissioner Glennon: Would it be convenient for you gentlemen to meet July 8th, at 2 o'clock?

Mr. Hazleton: Any time that would suit the Commission.

[fol. 73] Mr. Dykman: I wonder if counsel for the Committee could give us a list, not copies, of those cards, but if he has a list of the people that have signed them, to supply us with that list before the next hearing?

Mr. Hazleton: I would be glad to prepare it.

Mr. Dykman: That will be a great help to us.

Deputy Commissioner Glennon: Have it prepared.

Mr. Dykman: I understand counsel is not through with this witness, and therefore the time for cross-examination has not come.

Mr. Hazleton: Yes, that is right.

Deputy Commissioner Glennon: We will adjourn the case until July 8th, at 2:00 o'clock.

(Whereupon, at 4:15 o'clock P. M. on the 26th day of June, 1919, the hearing in the above-entitled matter was adjourned until July 8th, 1919, at 2:00 o'clock P. M.)

Last Exhibit No. 4.

[fol. 74] STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Hearing Order in Case No. 2376

Before Edward J. Glennon, Deputy Commissioner

New York City, July 8, 1919.

Met pursuant to adjournment at 2.00 o'clock P. M.

Appearances: E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District; Messrs. Cullen & Dykman, Appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. Crummey, Esq., of Counsel); Edgar [fol. 75] F. Hazleton, Esq., Post Office Building, Fulton Street Jamaica, New York, appearing for the Citizens Central Gas Committee of the 4th Ward of the Borough of Queens; Messrs. Aron & Wise, 50 Pine Street, New York City, appearing for Hathron Homes Corporation and the Land Credit Corporation; J. H. Schneider, Esq., St. Albans, New York, in person.

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains to Springfield, Laurelton and other localities.

Mr. Deegan: Ready.

Mr. Dykman: Ready.

Mr. Hazleton: I will recall Mr. Schaberhorn.

W. H. SCHABERHORN, recalled as a witness, having been previously duly sworn, testified further as follows:

Direct examination (cont'd) by Mr. Hazleton:

Q. Mr. Schaberhorn, could you state how many churches there are in what is known as Springfield?

A. There are four churches.

Q. In St. Albans, how many are there, if you know?

A. I am not sure, but I think only one.

[fol. 76] Q. In Rosedale, how many are there?

A. There are three.

Q. How many public halls are there in Springfield, one or two?

A. Well, there are three.

Q. In Rosedale?

A. I do not know.

Q. In St. Albans?

A. Two.

Q. Is there also golf club at St. Albans, consisting of about 400 members?

A. Yes.

Q. And they conduct a restaurant there, do they not?

A. Yes.

Q. You have testified that if gas were introduced into the section in question, that you would immediately construct at least 22 houses?

A. Yes.

Q. You are acquainted with Mr. Rosenblum, are you not?

A. Yes, sir.

Q. Have you heard him say how many houses he would construct if gas was installed out there?

Mr. Dykman: I object to that question.

Deputy Commissioner Glennon: Is Mr. Rosenblum here?

Mr. Hazleton: No.

Deputy Commissioner Glennon: Objection sustained.

By Mr. Hazleton:

Q. Where does Mr. Rosenblum live?

A. He lives in New York City in one of the up-town hotels. It has just escaped my mind where he lives, but probably I will think of it later on.

By Deputy Commissioner Glennon:

Q. Is he a real estate builder?

A. He is a real estate builder.

Q. Where does he operate, in the Bronx?

A. No, on Staten Island.

[fol. 77] Q. Does he own any real estate in Springfield?

A. Yes, sir; he purchased 360 lots for the purpose of building houses, and when he discovered that there was no gas——

Mr. Dykman: I object to that.

Deputy Commissioner Glennon: Never mind that. He purchased 360 lots?

The Witness: Yes.

By Mr. Hazleton:

Q. During your real estate development down there in selling houses, have you encountered people who would not purchase for the reason that no gas had been installed in that section?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Objection sustained.

Q. Have you had people refuse to purchase on account of the fact that there was no gas?

Deputy Commissioner Glennon: That is not necessary.

Q. Because no gas had been installed in that section?

Mr. Dykman: I make the same objection.

Deputy Commissioner Glennon: I will sustain the objection.

By Deputy Commissioner Glennon:

Q. Are there any schools down there?

A. Yes.

Mr. Hazleton: I will touch on that, your Honor, right away.

[fol. 78] By Mr. Hazleton:

Q. How many schools are there in that section, known as Springfield?

A. Two.

Q. Two schools?

A. Yes.

By Deputy Commissioner Glennon:

Q. Public schools?

A. One Public School and one Parochial School.

By Mr. Hazleton:

Q. How many are there in St. Albans?

A. One Public School.

Q. How many are there in Rosedale?

A. One Public School in Rosedale.

Q. Has the absence of gas in the sections surrounding affected the rental values?

A. It certainly has.

Mr. Dykman: I object to that.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

Q. It has?

A. It certainly has, to a very big extent.

Q. Can you give us something more definite than to a big extent?

A. When a party is looking for a house, and learns that there is no gas in Springfield, he will not purchase the same. A party will come to Springfield to locate in the section, and pick out a house, and when he finds out that there is no gas service he will not take the house. I might point out a place on the main street where the house cost at least \$10,000 to build. The property is terraced, and has a large barn and garage, and steam heat and hardwood floors. [fol. 79] and renting for \$35.00 a month, within two blocks of the station, and that is not a rare or exceptional case; that case prevails throughout.

Q. What would you say would be the average loss in rentals on account of there being no gas?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

A. That same house in a territory like Queens or Hollis, which is on the border line of Springfield, would rent for \$65.00 or \$75.00 a month.

By Deputy Commissioner Glennon:

Q. How far is the border line to which you refer away from the Springfield section?

A. From the Springfield section, away from this particular house on the Springfield road, two miles. If that house had been two mile further north, it would rent for \$65.00 or \$75.00 a month.

By Mr. Hazleton:

Q. The transit facilities to one house are just about as good in your section as in Hollis?

A. The transit facilities are about on a par.

By Deputy Commissioner Glennon:

Q. You said about two blocks from the railroad station?

A. About two blocks from the railroad station.

[fol. 80] By Mr. Hazleton:

Q. Could you state whether or not the absence of gas to your knowledge has interfered with people in obtaining domestic help in the section concerned?

Mr. Dykman: I object to the question.

Deputy Commissioner Glennon: I think we went over that the other day, but I will overrule the objection.

Q. Yes or no.

A. Yes.

By Deputy Commissioner Glennon:

Q. You mean, it does interfere?

A. It does interfere, yes, sir.

Mr. Dykman: I think I ought to make the grounds of my objection plain on the record. I object to the question as incompetent, irrelevant and immaterial, and move to strike it out.

Deputy Commissioner Glennon: Overruled.

Mr. Dykman: Exception.

By Mr. Hazleton:

Q. You have brought here certain signed applications, Mr. Schaberhorn, have you not?

A. Yes.

Q. Can you state the method or scheme that was followed in obtaining the same?

A. The cards were printed.

Q. Who authorized the cards to be printed?

A. The Central Gas Committee of the 4th Ward authorized the printing of the cards, and the cards were delivered to the Committee, and women were appointed—women were appointed, because Mrs. [fol. 81] A. H. Smith had been doing some Red Cross work, and she was placed in charge, and used the same system in getting the cards signed as was used in canvassing for the Red Cross work. In other words, they already has established teams in different sections, who had been trained to make house to house canvasses, and she took those cards and distributed them among the different teams and they went from house to house to get the cards signed, and after they were signed they delivered them back into my office.

Q. Who was on that Committee that had these cards signed?

A. Mrs. A. H. Smith, Chairman of the Committee. She took charge of the Springfield section. In Rosedale, a different system was used, and Mr. Winslow and Mr. Hunt were in charge, and then the St. Albans section they also had an individual team, and Mr. Jones was in charge of that.

Q. Mr. Schaberhorn, when you refer to Springfield, you also mean Laurelton?

A. Yes; I mean Laurelton and Jamaica Junction.

Q. You have testified here that pipes have been delivered?

A. Yes, sir.

Q. For the purpose of installing this gas?

A. Yes, sir.

Q. And those pipes still remain in that vicinity, and Jamaica Junction?

A. Yes, up to this morning.

Q. You saw them this morning?

A. Yes.

Q. In the section surrounding Springfield and St. Albans and Rosedale, is gas supplied?

A. Yes, sir; to the whole territory surrounding this section.

Q. Both in Queens and Nassau County?

A. Both in Queens and Nassau County.

[fol. 82] Q. How many garages did you say are in Springfield?

A. Two.

Q. And in Rosedale, if you know?

A. One.

Q. And in St. Albans, if you know?

A. One.

Q. Where?

A. I know of one on Locust Avenue and Merriek Road. If

there is another there, I do not know of it; there may be. By garages, I take it you mean public garages?

Q. Yes.

Mr. Hazleton: If it pleases your Honor, in relation to the signing of the applications, this is all the testimony we can offer as to how they were obtained, unless we were to bring the many different people who obtained the signatures of the people who signed them.

Deputy Commissioner Glennon: Did you submit them to Mr. Dykman?

Mr. Hazleton: Yes.

Mr. Dykman: I found in my basket this morning this list. I do not know what it is.

Mr. Hazleton: I guess that is what it is. I told them to deliver a copy to you, and I guess that is the list. I guess, Mr. Dykman, you will not doubt my word when I say that the people referred to, we are reliably informed, they have signed.

Deputy Commissioner Glennon: As I recall the last hearing, you had a certain cards which Mr. Dykman asked to be submitted for examination, the understanding being if he did not have any doubt about the signatures which appear on the cards, that they were to be submitted in evidence, without producing all of these different [fol. 83] people for the purpose of testifying. That is to say, that they would be admitted in evidence, indicating the willingness on the part of the subscribers to use gas in the event it was decided to place mains in that neighborhood.

Mr. Dykman: I made no stipulation about these cards at all. If the Commissioner means he announced that that would be the ruling—

Deputy Commissioner Glennon: Yes, that is what I say.

Mr. Hazleton: How about them?

Mr. Dykman: Are they now offered in evidence?

Mr. Hazleton: They have been offered heretofore, and I now renew my offer of those cards, and I might suggest that we could receive them subject to a motion to strike out if Mr. Dykman found that what those cards purport to represent is not a fact.

Mr. Dykman: I suppose the time has come for me to state my objection to the receipt of these cards in evidence?

Deputy Commissioner Glennon: You may proceed.

Mr. Dykman: I object to them as incompetent, irrelevant, and immaterial.

Deputy Commissioner Glennon: Do you mean on the ground that they are not properly proven?

Mr. Dykman: It has not been proven that they are the signatures of people living in that locality. It has not been proven that they [fol. 84] are signatures of living persons. These cards are not binding on anybody; they are not binding on the signers; they are not binding on the companies; they are not such written applications as would entitle a person living within 100 feet of existing mains to service. They are not evidence, or anything of that sort. They are simply hearsay. There is no opportunity of cross-examination.

They violate so many rules of evidence that a full objection would be as long as Wigmore on Evidence.

Mr. Hazleton: That sounds very well, Mr. Commissioner, but to satisfy Mr. Dykman, if he will furnish us with forms of application, we would be just as pleased to have the people sign up to take gas, if you will agree to furnish it, and if you will do that, we will have them sign these applications expressing their willingness to take gas.

Deputy Commissioner Glennon: Probably Mr. Dykman will stipulate to do that.

Mr. Dykman: Of course, I do not think it requires to be answered. I make my objection to this form of hearsay evidence.

Deputy Commissioner Glennon: There is only one ground for your objection, and that is the method of proving the cards. Of course, we know that the method pursued is not exactly within the rules of evidence. However, I believe if the cards are properly proved, that is to say, if a person or persons should appear here and testify that they signed those cards, that card expressing their willingness to take gas in the event the mains are installed, I believe they [fol. 85] would then become competent, relevant and material. I will admit the cards, subject to a motion to strike out if counsel for the Committee is unable to show, or unable to prove that they are authentic.

Mr. Dykman: I respectfully except. Will counsel state how many of those cards there are, to satisfy my curiosity?

By Mr. Hazleton:

Q. How many cards are there, Mr. Schabehorn, produced from the various sections?

A. 982.

Mr. Hazleton: If your Honor please, the form of the card, of each card offered in evidence reads as follows: "Central Gas Committee of the 4th Ward, Springfield Gardens, New York, dated 1919. If gas is introduced into my section I will become a customer. Signed and addresses."

The cards were received in evidence and marked Complainants' Exhibit No. 5 of this date.

Mr. Hazleton: That completes the testimony of this witness.

Mr. Dykman: Wait a minute, Mr. Schabehorn, if Mr. Deegan has no questions, I have a few I would like to ask you.

By Mr. Deegan:

Q. Mr. Schabehorn, how long have you been in that vicinity as a real estate man?

A. 12 years.

Q. Do you know of any houses in Springfield and St. Albans and Rosedale that are piped for gas?

A. I know that many of them are.

[fol. 86] Q. Could you give us any idea as to the number?

A. I have not made a careful study, but approximately, I should say, fully 50 per cent.

Q. Are those houses that have been constructed within recent years, particularly?

A. Fully 95 per cent. in recent years have been piped for gas.

Q. At the present time how are those houses heated, for the most part?

A. Steam or hot water heat.

Q. And furnace heat in some of them?

A. Yes, sir.

Q. In more merely coal ranges and coal ranges or stoves throughout?

A. Yes, sir.

Q. Are oil stoves used during the winter by many?

A. During the winter, I should say no. Oil stoves are used in the summer time.

Q. Have you had indicated to you by many of the residents of these sections for what purpose they intended to use gas?

A. I have.

Q. Will you state what those purposes were?

A. For lighting, heating and cooking.

Q. There is a good deal of room for development down in that section, is there not?

A. There is wonderful room for development.

Q. Has there been much development in the past ten years?

A. It would depend on what you call "much development."

Q. Have there been many houses constructed?

A. I should say no. We have a class of development there, we have a wonderful development company who have attempted to build houses, wonderful types of houses; I have figures here; they have all failed, while in the surrounding sections like Hollis and Queens, they have been a big success, and the only thing you could lay it to is the lack of gas.

[fol. 87] Mr. Dykman: I object to that and move to strike out the last part of the answer.

Deputy Commissioner Glennon: Strike it out.

Mr. Deegan: I do not know whether it definitely appears in the record just what sections the complainants wish gas mains to be extended to.

Deputy Commissioner Glennon: Is there not a map showing that?

Mr. Deegan: There is a map, but I want to get on the record the names of the different localities in which these particular complainants are interested.

Deputy Commissioner Glennon: I think that is in the record already. A map was offered in evidence in connection with that.

Q. Can you state the localities to which the complainants whom you represent desire the gas mains to be extended?

A. I have brought with me this diagram, or diagrams of the various sections of the different localities. It starts at Cedar Manor,

and extends south just beyond the section known as Jamaica Junction, and from there we went over and took in Springfield.

By Deputy Commissioner Glennon:

Q. Did you make the diagram yourself?

A. I had my secretary make it.

Q. Is it a fair representation of the places down there which you think gas should be installed in?

A. These diagrams take in simply the heart of the section, the thickly populated sections.

Q. Why not offer it in evidence?

A. I want to call attention to the one offered in evidence last [fol. 88] week, where streets which were shown on that map, and in connection with which there might be some trouble in locating these streets; this shows the streets and boundary lines; it carries out the typewritten form that we presented last week.

Q. Just explain the map and the papers already in evidence?

A. This is the same boundary, except it shows on this diagram where Cedar Street and Locust Avenue cut off to Lakeview.

Deputy Commissioner Glennon: Do you desire to offer that in evidence?

Mr. Hazleton: I offer it in evidence.

Mr. Dykman: Without conceding its accuracy.

Deputy Commissioner Glennon: Yes, of course.

The paper was received in evidence and marked Complainants' Exhibit No. 6 of this date.

By Mr. Deegan:

Q. Do the maps which were introduced in evidence through you at the last hearing show the location of the houses in these different sections?

A. Yes, sir.

Q. These maps are supposed to show the houses in the district of Springfield, Rosedale and St. Albans?

A. Yes, sir; they do.

By Mr. Dykman:

Q. I have a map here, or, rather, a photograph of a map, for my convenience in examining you, and if the Commissioner does not object, I am going to ask that you put a small pencil mark [fol. 89] on the localities you have been speaking about in the territory in which you are interested.

A. You mean in which the Committee is interested?

Q. Yes. If you will just put a cross on there, then we will know what we are talking about.

Deputy Commissioner Glennon: You had better offer it in evidence, so we can refer to it. I think we will all understand each other better if we have something before us.

Mr. Dykman: We might have it marked for identification.

Mr. Hazleton: I have no objection to it.

Deputy Commissioner Glennon: If you have no objection, it will be marked in evidence.

The paper was received in evidence and marked Company's Exhibit No. 7 of this date.

The Witness: I do not know what you want me to mark unless I cut off the southern section.

Q. There are certain names there—

A. What you want me to mark is the names of the towns. Take, for instance, the name Hicksville; there is no such name in reality. Do you want me to mark Cedar Manor?

Mr. Hazleton: Does Mr. Schabehorn understand the question? You have been asked to mark the sections you have been speaking about and into which the Committee asks that gas be extended.

By Mr. Dykman:

Q. What about the place called Locust Manor?

[fol. 90] A. The trouble in marking this is that some of these are names of which there is no such name in reality.

Q. What about the place called South Jamaica Place; what about this place called New Netherlands?

A. These are simply names. I do not want to pencil all these names, because it looks as if you were going over to New Netherlands.

Q. Let us do it this way: On each side of New Netherlands and South Jamaica Place are railroads?

A. Yes.

Q. Do you want gas in here between these two railroads (indicating)?

A. We want gas to come down into here (indicating).

Q. Along the red lines?

A. Yes.

Q. Up here (indicating) we have St. Albans; is that the St. Albans which you have been talking about?

A. Yes.

Q. Why not put the mark over here?

A. Put it anywhere you like.

Q. Of course, we all understand this is Springfield down here (indicating)?

A. Yes.

Q. Here is Laurelton (indicating); this is Rosedale Terrace and Rosedale, and this place with the disputed name, Hickview Park, running down to the trolley line which is shown by a heavy dotted line; that is all included?

A. Yes, sir.

Q. Then you go below this heavy dotted line into the place called Springfield Park?

A. No.

Q. You do not?

A. No.

Q. Do you go below the heavy dotted line except in Rosedale?

A. We might in a particular section like this where you run into a great many houses; there are probably 60 or 70 houses right in there (indicating).

Q. What place are you talking about now?

A. I am talking about this place right here (indicating).

[fol. 91] By Deputy Commissioner Glennon:

Q. When you say this place, you mean the black dots?

A. Yes.

By Mr. Dykman:

Q. Mr. Schabehorn, you have stated that you are in the real estate business?

A. Yes.

Q. Do you mean by that that you own property yourself, or are you the agent or broker?

A. I own property myself, and I act as a broker, and I am also an agent for a great many clients.

Q. How much land do you own yourself?

A. How do you want me to describe it, by the assessed valuation—

Deputy Commissioner Glennon: How many lots do you own?

Q. How many lots?

Mr. Hazleton: You mean in this section; you mean in Springfield?

Mr. Dykman: Yes, absolutely.

Deputy Commissioner Glennon: In the territory affected?

A. It is over 150 lots.

Q. How much over?

A. Do you want the exact number?

Q. If you can give it.

A. I cannot give it to you. I cannot tell you the exact number. I cannot give it to you exactly. I can give it to you by getting my books together and figuring it up, but it is over 150 lots.

Q. Is the record title to these lots in your name?

A. Not in all cases.

[fol. 92] Q. In how many cases?

A. Probably in the case of at least 100.

Q. At least 100?

A. Yes.

Q. Is the record title to the rest in a corporation?

A. No.

Q. Individually?

A. Yes.

Q. When you first met Mr. White at the Gas Company, you were

representing not the committee that you represent today, but another committee, were you not?

A. I was representing the same people.

Q. Will you answer my question?

A. I have tried to answer it.

Deputy Commissioner Glennon: What do you mean to say; you mean to say it had different people in that you were representing?

The Witness: No. I tried to explain at the last hearing that at that time we had a committee representing the Springfield Citizens Association, and since that time we have simply enlarged the committee, some of the former committeemen have resigned. If that is what counsellor means. But at no time did I ever represent anybody except the same people.

By Mr. Dykman:

Q. What was the name of the civic organization, or civic association, of which the Committee was the Committee?

A. The Springfield Citizens Association.

Q. What is the present organization represented by, Mr. Hazleton; is it a committee of that association?

A. Yes.

[fol. 93] Q. The Central Citizens?

A. The Central Gas Committee of the 4th Ward.

Q. That is a committee of the Civic Association, is it?

A. I will have to explain what that is. This Committee was appointed—

Q. Can you answer the question yes or no?

A. No, because it would be misconstrued. This committee was appointed by the Springfield Citizens Association, which afterwards invited in different other communities and enlarged the committee, so that we represent the various civic organizations from the different towns, but it is still a part of the Springfield Association, at least. I am a member of the Springfield Citizens Association, and certain members are members of that, and they are also members of St. Albans, Rosedale, and we have formed one big body, what we started from the Springfield Citizens Association.

Q. Then this new organization has members who are also members of the old civic organization?

A. Yes.

Q. But it is not a committee of the old civic association exclusively?

A. No.

Q. It represents other places?

A. Yes, sir.

Q. So this committee which you are now a member of represents more than Springfield?

A. Yes.

Q. It covers a larger territory than Springfield?

A. Yes, sir.

Q. What other places besides Springfield does it represent?

A. Rosedale, St. Albans, Jamaica South and Jamaica Junction. Those names like Jamaica Junction and Springfield are really one town. I have omitted purposely to state Laurelton, but that is all Springfield.

[fol. 94] Q. Those are all the places that the Committee represents?

A. Yes, sir.

Q. These ladies that you spoke of as going out and getting these cards were representatives of this Central Committee, I take it, were they not?

A. Yes, sir.

Q. Do you know whether they confined themselves to the territory which you have said is represented in the Committee?

A. No.

Q. What do you mean by no, Mr. Schabehorn, that you do not know, or that they did not?

A. I do not know.

Q. I understood you to say that you generally supervised their work?

A. Yes—no, I did not say that.

Q. What?

A. I did not say I supervised their work. I told you how their work was done.

Q. What part did you take in it?

A. The part of seeing that the cards were distributed to the ladies; that they were furnished with the cards, and that the cards were returned.

Q. And you simply yourself handed out the cards to the ladies; you saw that they were handed out to these collectors, as you might call them?

A. Yes, sir.

Q. And that they were then returned to your office?

A. Yes, sir.

Q. Is that all you did?

A. About all.

Q. How much more did you do?

A. Nothing more.

Q. Then that is all you did?

A. That is all.

Q. Did you look at them when they came back?

A. Yes.

Deputy Commissioner Glennon: Look at the cards, or the ladies?

Mr. Dykman: I will leave that to your Honor. I have not seen the ladies yet.

[fol. 95] By Mr. Dykman:

Q. You have not even seen Mr. White, or your new Committee, have you?

A. No.

Q. And the only public utterance of Mr. White which you heard was this speech in March, 1919?

A. The only public speech I ever heard him make. What do you mean when you say public utterance?

Q. Public speech. The only time when there were more than the three or four people present that you named, the only time you ever heard Mr. White talk on this subject, except what you might call private, he said it was impossible to make the extension which you wanted?

A. That was a part of his speech, yes.

Q. Will you answer my question?

A. Yes, that was a part of his speech. That question asks two questions; which one do you want me to answer first?

Deputy Commissioner Glennon: I think you have answered the question all right. We had better proceed. We are wasting a lot of time. Do not ask questions of counsel.

By Mr. Dykman:

Q. What I want to know is this: You heard Mr. White talk three times, did you not?

A. Yes, sir.

Q. Once was in the Gas Company in Brooklyn, once was in Mr. Izor's house, and once was in public?

A. Yes, sir.

Q. Down in Springfield?

A. Yes, sir.

Q. Now, the only time that you ever heard him speak in public on this subject he said that the extension could not be made, did he not?

A. Yes.

[fol. 96] By Deputy Commissioner Glennon:

Q. What reason did he assign in public, if any?

A. The reason he assigned was that the price of material—and he had given prices—had risen so high that it was impossible to make the extension until prices were reduced to what they were during pre-war times. Another reason that he gave was the fact that some of the pipes that had been bought for the extension and which had been delivered at Jamaica had been taken by the Government during the war.

By Mr. Hazleton:

Q. Do you recall exactly, or approximately, when your first meeting with Mr. White was held, the meeting at the gas company office?

A. October, 1916.

Q. Are you sure it was not in May, 1916?

A. No, I am not sure that it was not in May, but I took a memorandum from the books of the Association, and it would appear from those books that it was in October, 1916.

Q. You are not certain of that, however?

A. I am not certain.

Q. It may have been in May, 1916?

A. Yes, sir.

Q. Was anything said then, or was not something said at that meeting about a pending rate case before the Public Service Commission?

A. Yes, sir.

Q. Were you not told that if that case went against the company, any extension would be impossible?

A. Yes, sir.

Q. You said the other day, Mr. Schabehorn, in talking about this meeting, that you were asked not to say anything to the people in Rosedale, Jamaica Junction and St. Albans?

A. Yes, sir.

Q. You are now asking for an extension to Rosedale and St. Albans?

A. Yes, sir.

[fol. 97] Q. So that even upon your own statement you have never been promised gas for a part of the territory which you now ask gas for?

A. No.

Q. You spoke at the last hearing in answer to a question either by the Commissioner or directed by him, it is not quite plain yet; you were asked what is the station, and you spoke of Hickview.

A. No, sir.

Q. Possibly that is an error in the record, but the record says:

"Q. What is the station?

"A. In that territory that we ask for gas, that territory takes in the Cedar Manor, Locust Avenue Station, Hickview Station."

A. That is an error. That should be Higbie Avenue.

Q. "Laurelton Station, Rosedale Station, Springfield Station and St. Albans Station," the others are right, are they?

A. That is right.

Q. At your first meeting with Mr. White, which you spoke of at the last hearing, you said at that same interview you were told that the money for that extension had been set aside in the budget of the gas company; who spoke of the budget of the company?

A. I made no record of the gentlemen that were present.

Mr. Dykman: I move to strike that out as not responsive.

Deputy Commissioner Glennon: Strike it out.

By Deputy Commissioner Glennon:

Q. Who spoke of the budget?

A. In the first place, that was not the first meeting; the first meeting that we have any reference to was the meeting where the promise was made; Mr. White said that the money had been set aside for the budget.

[fol. 98] Q. Set aside in the budget of the gas company?

A. Yes, sir.

By Mr. Dykman:

Q. So I understand you to say now that at the first meeting in the office of the Brooklyn Union Gas Company no promise was made?

A. You understand me to say this, that the first meeting was the time they told us that we would get gas provided there was no active legislation reducing the price of gas in our territory.

Q. And that was all that was said?

A. No, there were other things.

Q. That was the understanding you got at the first meeting, that if the rate case went against the company there would be no extension?

A. There would be no extension. That was the May meeting.

Q. May, 1916?

A. Yes, sir.

Q. So we are agreed now on two points: first, that the meeting was held in May, 1916; and second, that at the meeting no promise was made?

A. But there was another meeting, an October meeting; so there were two meetings in the gas company office.

Mr. Hazleton: Pardon me. Was that October meeting before the May meeting, or after the May meeting?

The Witness: After the May meeting. The promise was made after the May meeting.

By Mr. Dykman:

Q. At the last hearing, Mr. Schaberhorn, you testified on page [fol. 99] 18 of the minutes that you were escorted into the office of the gas company; that Mr. White was present and some other persons. I think counsellor asked you for the conversation, and on page 20 the Commissioner asked this question:

"Q. Was that six months to begin the work, or that you would have the gas in there in six months?"

"A. That we would have the gas. At that same interview we were told that the money for the extension had been set aside in the budget of the gas company." I now ask you who said that?

A. Mr. White?

Q. Was this according to your testimony at the last hearing, that this was the first visit to the gas company?

A. That should have been the visit in October, 1916. There was a meeting previous to the October meeting, which I had overlooked, which I had forgotten; and which only you have refreshed my memory on by telling us of the fact that if there was no active legislation in the Fall—that was in May, and in October, it was late in the Fall; so there was a May meeting.

Deputy Commissioner Glennon: The reason that prompted me to ask that question was that this witness was referring, I thought, at the time, to a meeting held in the Fall.

Mr. Dykman: He was.

Deputy Commissioner Glennon: Then I asked him about the six months period. What struck me was whether it was possible to do the work during the winter months, or begin the work six months from that time.

[fol. 100] By Mr. Dykman:

Q. You have testified to a meeting in the Fall of the year in Mr. White's office. That is perfectly true?

A. Yes.

Q. Were there two meetings at the gas company?

A. Yes, sir.

Q. At the first meeting in May you were told if the rate case went against the company there would be no extension?

A. Yes, sir.

Q. Do you know, or do you not, that the Commission did decide that rate case against the gas company in the month of May, 1916?

A. In the month of May, 1916?

Q. Yes.

A. You mean the same month we were there?

Q. Yes.

A. No, I do not know that.

Deputy Commissioner Glennon: Is that the time it was decided?

Mr. Dykman: Mr. Crummey tells me so.

Mr. Crummey: I am very familiar with the record. The order of the Commission was made, dated May 25, 1916, reducing the price for gas in the 4th Ward.

Deputy Commissioner Glennon: That was prior to the time that Mr. White, in October, according to this witness, made the promise to install the mains.

Mr. Crummey: The order of the Commission was dated May 25, 1916, but it went into effect the 1st day of July, 1916.

Mr. Deegan: That order, however, is not now in effect. Has not that order been suspended since?

Mr. Crummey: The order is suspended for one year from the 1st of May of this year.

[fol. 101] Mr. Dykman: That does not bear at all on what was said at this meeting.

By Mr. Dykman:

Q. When was your third meeting; am I right, May 2, 1917, at Mr. Izor's house?

A. When you get back to the second meeting, that would bring us back to the October meeting.

Q. I am talking about the third meeting?

A. You said the second meeting. The third meeting was in Mr. Izor's house in December, 1916.

By Deputy Commissioner Glennon:

Q. Since the last meeting you have refreshed your recollection from entries made in the books?

A. Yes, sir.

By Mr. Dykman:

Q. Now, such being the case, will you give us, either from your own recollection, or the memorandum you have in your hands when these meetings were held?

A. All I had is the month that the report was made to the Association.

Q. What I want, Mr. Schaberhorn, are meetings that you were present at.

A. I cannot give you the exact date, except the month the report was made to the Association; when we made our report to the Association on October 9, 1916. That evidently was the October meeting.

Q. What makes you think that?

A. Because that was a general report to the meeting, and we would not be reporting a May meeting in October, or a January meeting in October. We would probably report the meeting the same month, or within a few days.

[fol. 102] Q. You have not any other reason to believe that was not the report of the May meeting with Mr. White?

A. Yes, I have, because the May meeting with Mr. White would have been reported either in the month of May or in the month of June. We would not carry the report on a gigantic proposition like this for such a long time without reporting it.

Q. But you have not a report of the May meeting in your records?

A. I only went back to the October meeting.

Q. What is your next entry?

A. December, 1916, I met Mr. White at Izor's home.

Q. Were you there?

A. I was.

Q. What is your next one?

A. The next one is the report of the meeting made by Mr. Izor in his report read at the last hearing. I was not present at that meeting.

Q. Then, the next one which you were present at?

A. March 10, 1919, when Mr. White spoke at Springfield.

Q. So between December, 1916 and March, 1919, you did not meet him?

A. No.

Q. You do not remember, then, any meeting on the 2nd of May, 1917, at Mr. Izor's house?

A. On the 2nd of May?

Q. Yes.

A. There may have been a meeting in Mr. Izor's house in May; I do not remember the exact date, but I have it down here as May 14. That may be the Springfield meeting where I made Izor's report.

Q. At the last hearing you testified about a meeting at Mr. Izor's house?

A. Yes.

Q. When was that meeting you testified about?

A. There was two meetings in Mr. Izor's house. One was in December, 1916; that is the only one I remember. I will not say [fol. 103] there were two meetings there.

Q. Just one that you remember?

A. December, 1916.

Q. Was that the meeting you were testifying about at the last hearing?

A. That was the meeting; yes, sir.

Q. You have spoken of some pipe, Mr. Schaberhorn, at Jamaica; do you know who owns it?

A. Only that Mr. White said it was owned by the gas company.

Q. You do not know who owns it?

A. I do not know that he was telling the truth; no.

Mr. Dykman: I do not suppose that is worth moving to strike out, Mr. Commissioner. But I move to strike it out as not responsive.

Answer read by the stenographer.

Mr. Hazleton: Perhaps he could put it in better language, but it was a direct reply to Mr. Dykman's question.

Deputy Commissioner Glennon: Strike it out.

By Mr. Dykman:

Q. Do you know who owns the pipe in Jamaica?

A. Upon the word of Mr. White, I believe the gas company owns it. I know only what Mr. White says, that the gas company owns it.

Mr. Dykman: I move to strike that out as not responsive. I asked the witness if he knows who is the owner of this gas pipe.

Deputy Commissioner Glennon: I realize that the answer is not responsive, but I am going to let it stand, because he is giving his own knowledge on the subject.

[fol. 104] By Mr. Dykman:

Q. Mr. White did not say any particular gas company; he simply said the gas company?

A. The gas company.

Q. You said you saw that pipe this morning?

A. Yes, sir.

Q. Had you seen it recently when you testified at the last hearing?

A. Had I seen it recently?

Q. Yes; had you seen it shortly before, or recently before the last hearing?

A. Yes, sir.

Q. At the last hearing on page 34 of the minutes you said it covers a territory of several blocks square. After seeing it this morning, do you want to correct that statement at the last hearing?

A. No.

Q. You want to let it stand as several blocks square?

A. The land where the pipe stands on is a territory of several blocks. I did not mean to say that there is pipe covering every inch of the territory.

Q. At the last hearing you meant that this pipe was stacked up in a territory covering several blocks?

A. I mean the same thing today.

Q. And you mean the same thing today?

A. Yes, sir.

Q. But you never meant to say that the pipe itself covers several city blocks, did you; you could not say that, would you?

A. No.

Q. Truthfully?

A. No.

Q. It covers less than a city block, does it not?

A. I should say not. I should say it covers more than a city block.

By Deputy Commissioner Glennon:

Q. Is it near the station in Jamaica?

A. Just southwest of the Jamaica station.

[fol. 105] Q. That is the main Long Island station?

A. Yes, the main Long Island station.

Q. Can you see it from the train?

A. Yes, I think you can.

By Mr. Dykman:

Q. This list, Mr. Schabehorn, I assume, comes from your counsel?

A. Yes, sir.

Q. This list which I hold in my hand?

A. Yes, sir.

Q. Have you seen it?

A. Yes, sir.

Q. On the outside is "Springfield Names?"

A. Yes, sir.

Mr. Dykman: I found it lying on my desk this morning without any letter accompanying it.

Q. Is that a list of the names on the cards which you have submitted?

A. It is.

Q. I find on the 3rd page the name "L. L. Rich, Highland Avenue," and at the bottom of the same page the name of M. S. Rich, Highland Avenue. Do you know whether these people are any kin to each other, or live by any possibility in the same house?

A. I do not know that they are any kin.

By Deputy Commissioner Glennon:

Q. Do you know whether they live in the same house or not?

A. They probably do.

Q. Is it a two-family house, or a one-family house?

A. I have never been in the house. From the outside it looks like a great big family house.

By Mr. Deegan:

Q. Do you know whether they are members of two separate families?

A. I do not know.

[fol. 106] By Mr. Dykman:

Q. Do you know them?

A. I know a family lives there by the name of Rich.

Q. You do not know whether it is L. L. Rich or not?

A. No.

Q. Do you know M. S. Rich?

A. No.

Q. Do you know the sex of either?

A. No.

Q. They may be married and be husband and wife, for all you know?

A. Yes.

Deputy Commissioner Glennon: Or father and son.

Q. Or father and son, or anything else?

A. Yes, sir.

Q. Do you know Washington Avenue in Springfield?

A. Yes, sir.

Q. Do you know College Avenue in Springfield?

A. Yes, sir.

Q. And you know that they intersect?

A. Intersect?

Q. Do they not; that is my recollection?

A. Yes, sir.

Q. Do you know a Charles A. Lees?

A. Yes, sir.

Q. He is down here as "College Avenue?"

A. Yes, sir.

Q. Do you know Mrs. A. M. Lees?

A. Yes, sir.

Q. She is down here as Washington Avenue?

A. Yes, sir.

Q. You know, do you not, that those people live on the corner of College and Washington and are husband and wife?

A. I know nothing of the kind. I know they do not live on the corner of College and Washington Avenues.

Q. You know that as a fact?

A. Yes, sir; I know that as a fact.

[fol. 107] Q. Do you know William P. Amberman on Springfield?

A. I do not know the name; I do not know the man.

Q. There is also G. H. Amberman on Springfield Avenue; do they live in the same place?

A. That is a very common name down there, and there is probably six different families of that name.

Q. You do not know?

A. I do not know that those two are not the same people, or do not live in the same house.

Q. Do you know B. Montgomery in Laurelton?

A. No.

Q. Do you know who he is?

A. I know the name; I know there is a Montgomery that lives in Laurelton.

Q. He is down here on this list?

A. Yes, sir. I do not know all the people on this list.

Q. That would be marvelous if you did.

A. If you ask me if he is down here on this list, I infer that you assume I know them.

Q. I am asking you if you know who he is?

A. No, sir.

Q. Do you know anything about him?

A. No, sir.

Deputy Commissioner Glennon: I understand Mr. Hazleton is going to call the people who prepared these cards so you can establish more by cross-examination of them.

Mr. Hazleton: I understand they are to be incorporated in the Commissioner's ruling, and I will subsequently call some of them.

Deputy Commissioner Glennon: If they can serve the purpose, [fol. 108] you can establish more by them than you can by cross-examining this witness.

Mr. Dykman: If they are going to be called, I shall stop cross-examining on this list.

By Deputy Commissioner Glennon:

Q. Were there any names procured by you to be signed?

A. Yes.

Q. By looking at the list which counsel has in his hands?

A. Yes.

Deputy Commissioner Glennon: Just have it marked for identification.

Mr. Dykman: I prefer not to put this in evidence, because it has a lot of private notes on it for cross-examination.

Deputy Commissioner Glennon: Have you an extra copy?

Mr. Hazleton: Yes.

(The paper was received in evidence and marked Complainants' Exhibit No. 8 of this date for identification.)

Deputy Commissioner Glennon: You can examine him on those whose names he procured to be signed.

By Deputy Commissioner Glennon:

Q. I understand you to say that there were certain names procured by you personally?

A. Yes, sir.

Q. Will you refer to Complainant's Exhibit No. 8 for Identification and state the names of those who signed the cards in your presence?

A. Mr. Commissioner, there are pretty nearly 900 names, and it will take some time to check the whole list, and find out each individual name I procured.

[fol. 109] Q. About how many names did you procure?

A. About twenty.

Deputy Commissioner Glennon: Is there anything further?

Mr. Dykman: Yes, your Honor, but I do not think it proper cross-examination, nor do I agree to examine the witness on the names which he procured, because I have objected to the introduction in evidence of these cards, and it seems to me this is a part of the Committee's case, what he did in procuring those names.

Deputy Commissioner Glennon: He says that he is not in a position to say without examining the cards and comparing all of the cards, those he procured, signed by the people residing in that section. That is to say, you wish to cross-examine him only on the names he procured and had signed, and you want to excuse the witness now?

Mr. Dykman: No, I have more questions.

By Mr. Dykman:

Q. At the last hearing, at the very end of it, in answer to some questions from the Commissioner, the Commissioner asked you what seems to be the chief objection out in that neighborhood to building houses, and you answered that "the chief objection is the lack of gas. I personally have sold a large number of lots to various people who are engaged in building, but many of these people, when they have investigated the matter thoroughly and found out what a serious objection it was owing to the fact there was no gas, refused to build." I assume that your intention was to [fol. 110] state to the Commissioner a condition in which no building was going on practically, and a general retarding of the development of this place by reason of the lack of gas; is that correct?

A. Yes, sir.

Q. You said in that connection that you could give the names of builders who had refused to build on account of there being no gas, and that people were going a long distance away because they could not get gas?

A. Yes.

Q. And generally, I assume, wish to inform the Commission that the development is greatly being held back on account of the lack of gas?

A. Yes, sir, absolutely.

Q. Things are at a standstill?

A. That depends on how you use it.

Q. I do not mean an absolute standstill.

A. The place is not growing in conformity with the surrounding sections, because of the lack of gas. There is no other reason that you can assign to it.

Q. I have here a clipping from a newspaper called the "Queens County News," July 5, 1919, headed "Real Estate Column by William H. Schabehorn."

A. Yes, sir.

Q. Is that your advertisement (showing paper to witness)?

A. Yes, sir.

Q. You put that in, did you?

A. Yes, sir.

Q. It begins, Mr. Schabehorn, "Real estate business at Springfield has never been better."

A. Yes, sir.

Q. "The demand grows greater daily."

A. Yes, sir.

Q. "Home-seekers are doing exactly as I predicted six months ago. They are buying large plots on which to build homes. Builders have also been interested in our section. They feel confident that [fol. 111] we are soon to have gas and in another four weeks new houses will be in the course of construction in all parts of the town." Then, skipping some—I am going to put it in evidence here—(reading) "The present vast building operations are not temporary." "Vast building operations," you said that, did you not?

A. Absolutely. Why not read the part you skipped?

Deputy Commissioner Glennon: Why not offer it in evidence?

Mr. Dykman: I will read the whole thing.

The Witness: You cannot skip two lines and give the part about vast building operations covering the whole of Queens County.

By Mr. Dykman:

Q. We will commence again. You start by saying that real estate business at Springfield has never been better—the portion I left out being "Real estate prices are on the upward trend. They are going to mount higher and higher. We have gone through the period of depression. From now on fortunes will be made by

wise realty investors. The day for which we have long waited has come. Peace and prosperity reign throughout the land. The signing of the peace treaty on last Saturday was the signal for 'full steam ahead.' Big business will sweep the country like an avalanche. The present vast building operations are not temporary." Now, Mr. Schabehorn, did you mean what you said in this advertisement, or do you mean what you said to the Commissioner at the last hearing? [fol. 112] A. I mean exactly what I said at both times. That advertisement does not change any iota of what I said at the last meeting. I said that the Springfield territory does not grow in conformity with the other surrounding sections. I did not say that there was not any building going on in Springfield, or St. Albans; I said it is not in proportion to the surrounding sections, and I qualified that in this advertisement when I said that the vast building operations cover a big territory.

Q. In other words, in your opinion your testimony at the last hearing and this advertisement are reconcilable and equally correct?

A. That advertisement and my testimony here does not conflict.

Mr. Dykman: I offer this clipping in evidence.

Deputy Commissioner Glennon: The same will be received.

The paper was received in evidence and marked Company's Exhibit No. 9 of this date.

Mr. Dykman: That is all.

By Mr. Hazleton:

Q. Mr. Schabehorn, you stated Mr. White was speaking to you in relation to the pipe that had been delivered to the vicinity of Jamaica, that he said the gas company owned that pipe; what gas company were you speaking about?

A. We were speaking, I always assumed——

Q. What gas company were you speaking about?

A. The Brooklyn Union Gas Company.

Q. Of course, you understood that the Brooklyn Union Gas Company owns the entire stock of the Woodhaven Gas Company?

A. Yes.

[fol. 113] Mr. Hazleton: That is all. There is nothing further from this witness.

Deputy Commissioner Glennon: Call your next witness.

Mr. Hazleton: I will call Mrs. Smith.

Mrs. ANNA M. SMITH, Maple Avenue, Springfield Drive, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Madam, how long have you resided in Springfield?

A. What was the question?

Q. How long have you resided in Springfield?

A. Eleven years this July.

Q. Are you the President of the Mothers' Club?

A. No.

Q. Were you?

A. I never was.

Q. What lady was?

A. I am Vice-President. Mrs. Fred Hendrickson was the President.

Q. You are the Vice-President?

A. Yes, sir.

Q. There is one Public School there, is there not?

A. Public School No. 37.

Q. You know the course which is known as the Science Class, which are given in Public Schools?

A. Yes, sir.

Q. In this Public School in Springfield is there any Science Class?

A. There is not.

Q. What is the cause of it?

A. As Chairman of the School Committee, we are applying for improvements in the school, and there is no cooking class of Domestic Science.

Q. What is the cause?

A. Because of the lack of gas.

[fol. 114] Q. Have you ever had any experience relative to obtaining domestic help in that vicinity?

A. I have domestic help.

Q. What.

A. I have domestic help.

Q. Have you ever had any experience relative to help refusing to work on account of having no gas?

A. I have not myself.

Q. Were you in charge of the committee that obtained the signatures to those cards which have been offered in evidence?

A. I was. I had charge of that committee.

Q. You had charge of the committee in Springfield, did you not?

A. In Springfield only.

Q. Who worked under you?

A. I came in late at the meeting and have been trying to jot down a few names. I have Mrs. Bertha Hendricks—before I come to that can I say a few words on another question?

Q. No.

Deputy Commissioner Glennon: Yes; go ahead.

A. (Continuing:) I had charge of the Red Cross and Armenian Drive collecting funds, and in getting money for the different drives. We tried to follow the plan of dividing the different districts, and because it was a success in that respect, we tried the same thing with the cards so no one would be responsible and we could cover the district more thoroughly, and many of them had served on the different

Drives of importance. The following ones worked with me in getting the cards signed: Mrs. Bertha Hendricks, Mrs. Fred Hendrickson, Mr. Lehner, Mrs. Castine, Mrs. Joseph Koehler, Mrs. Hudwin, Mrs. F. Johnson, Mrs. Casement and Mr. Reichert, and I took some around [fol. 115] myself. There may be other names, but I just jotted down those names.

Q. These people went out and obtained the signatures to the various cards and returned them to you, did they not?

A. Yes, sir; they did.

Q. Did you obtain any signatures yourself?

A. I did.

Q. How many?

A. About twenty-five. The Jamaica Park outlying districts are rather——

Mr. Hazleton: That is all; I will have each one. I do not want to question Mrs. Smith relative to the cards she had signed as I wish to go through the entire number.

By Mr. Dykman:

Q. I have a list, Mrs. Smith, which Mr. Hazleton tells me is a list of the names of the people on those cards. I understand you had general charge as Chairman of the committee?

A. Yes, sir.

Q. The localities named on here, Jamaica South, St. Albans, Jamaica Junction, South Jamaica—is that the same as Jamaica South?

A. Jamaica South, yes.

Q. Springfield—of course, at one point there is plain Jamaica, Earlington Avenue, Jamaica and Farmers Avenue, Jamaica.

A. That would be Jamaica South.

Q. Jamaica Park?

A. Jamaica Park.

Q. Springfield Manor, Mrs. J. Reuckel, Roseland Avenue?

A. That is Springfield proper.

Q. It is a misprint Shore View Park; where is that?

A. That is sometimes called Jamaica South; usually called Jamaica South.

Q. Jamaica Junction?

A. Jamaica Junction, that is a part of Farmers Avenue, Jamaica South.

[fol. 116] Q. Broadway——

A. Springfield proper.

Q. Springfield Gardens?

A. That would be all of Springfield.

Q. Locust Manor?

A. Locust Avenue.

Q. W. Bertrum, Locust Manor?

A. That is Springfield, Locust Avenue.

Q. Is Locust Manor one of the places that makes a request for service, or do you know that?

A. No; Locust Avenue we take in, but I do not know of Locust Manor. You see, Jamaica South and Jamaica Park are practically Jamaica South, the lower part of Farmers Avenue.

Q. Here is the name down here as Locust Manor; on each map is a place called Locust Manor?

A. I do not know.

Q. That is one of the names you got?

A. I do not know Bertrum; I do not recall that name.

Q. Laurelton?

A. Laurelton is included, but I do not have charge of that.

Q. And then we come, without counting them, to what looks like ten or fifteen, possibly more, Mrs. Smith, who are down as Bay View, Jamaica Creek; where is that?

A. Bay View is at the extreme end—I do not know how to locate it.

By Deputy Commissioner Glennon:

Q. Does it appear on the map in evidence?

A. Yes, sir.

By Mr. Dykman:

Q. Bay View, Jamaica Creek, is down in the creek commonly known as Bay View Landing, is it not?

A. I do not know that. I only know it as Jamaica Creek.

Q. Is Jamaica Gardens in that locality?

A. I do not know anything about Jamaica Gardens.

[fol. 117] Q. Do you know where Idlewild is?

A. I do not know where that is.

Q. You did not have charge of getting the names there?

A. No, not in Idlewild Park.

Q. Did you go down to Jamaica Creek?

A. Yes, in Jamaica Creek, because I thought that was included in Bay View Landing.

Q. I do not know, Mrs. Smith, whether you can tell me on this map which is in evidence or not, where that is?

A. I do not know anything about that. I know nothing about Bay View, or Idlewild.

Q. These cards which are from Jamaica Creek were obtained by your authority, as Chairman?

A. Yes, as Chairman.

Mr. Dykman: That is all.

Mr. Hazleton: I will call Mr. Brown.

[fol. 118] The following witnesses were then sworn, each of whom testified that he or she had obtained signatures on cards similar in all respects to those obtained by the preceding witness in the number set opposite the name of each:

Jay H. Boyce	105
Matthew R. Seaman	45
Raymond O'Connor	172
John J. McLean	20
Victor M. Berthold	34
Joseph L. Phillips	91
Mrs. O. H. Stevens	15
Mrs. L. W. Peister	7
Mrs. Arthur Howard	30
Mrs. Charles Berry	19
Charles H. Winslow	106
Charles W. Steinhoff	29

which cards were received in evidence following objection and exception of the plaintiff in error and constituting a portion of Commission's Exhibit No. 5."

[fol. 119] EDWARD H. BROWN, St. Albans, Central Avenue, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Mr. Brown, you are an attorney and counsellor-at-law, are you not?

A. Yes, sir.

Q. Have you been interested in the development of the section known as St. Albans?

A. The part of St. Albans called Addisleigh I have developed.

Q. What are the class of houses constructed there?

A. The houses that I am building now would run from \$8,000 to \$14,000 actual cost.

Q. How many houses are you now constructing?

A. Four that are actually under way, and eleven applied for and [fol. 120] to be started, including the four, very shortly.

Q. Would you say the lack of gas has interfered with sales, or retarded the building in that section?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

A. Yes.

Q. Is there a club house in that section?

A. Yes, sir; the St. Albans Golf Club.

Q. And that consists of about 400 members?

A. 400 members and a few over.

Q. They conduct a large restaurant there for the members?

A. A restaurant for the Club; an ordinary restaurant for the Club.

By Deputy Commissioner Glennon:

Q. How many houses are there in the St. Albans section, about?

A. I do not know, sir. I know that those I have built and re-modeled, not counting those I spoke of before, there are 24 in number. I did not build any during the war, because I was not permitted to do so.

Mr. Hazleton: We have photographs of the class of house there, if the Commissioner wants them introduced in evidence.

Deputy Commissioner Glennon: I do not think that is necessary.

Mr. Hazleton: The houses cost from \$8,000 to \$14,000. They are one-family houses. That is all I have with this witness.

[fol. 121] Deputy Commissioner Glennon: Is there any cross-examination?

Mr. Dykman: No cross-examination.

Mr. Hazleton: I will ask Mr. Berthold to take the stand.

VICTOR M. BERTHOLD, Laurelton, Belmont Street, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Mr. Berthold, how long have you resided in Laurelton?

A. About ten years.

Q. You are acquainted with Mr. White?

A. Absolutely, sir.

Q. When was the first talk you had with Mr. White, please?

A. It is difficult to answer that question.

Q. Just answer my questions. About when was the first talk?

Mr. Dykman: I object to the witness testifying from a memorandum.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

The Witness: The memorandum I have—

Q. Wait a minute. About when was the first talk?

A. I think in October, 1916.

Q. Where was that talk?

A. At the office of the Brooklyn Union Gas Company.

Q. Who was present?

A. Mr. White, the Engineer and Vice-President as introduced by Mr. White.

[fol. 122] Q. What other men from Springfield?

A. The people who are present. I have the names.

Q. Was Mr. Schabehorn present?

A. Yes, sir.

Deputy Commissioner Glennon: And several others from that locality?

The Witness: Yes. and Mr. Izor, too.

By Mr. Hazleton :

Q. Was the name of the Vice-President given?

A. Yes, sir, but I have forgotten the name.

Q. What was said at that conversation?

A. A lot.

Q. Tell me in relation to the installation and conveying of gas into Springfield.

A. We were promised the installation of gas into Springfield by Mr. White.

Mr. Dykman : I object unless he states the conversation.

By Deputy Commissioner Glennon :

Q. You say you were promised gas; in what words did he promise it to you?

Mr. Dykman : I move to strike out the answer.

Q. What did he say?

A. He said they were willing to introduce the gas into Springfield.

By Mr. Hazleton :

Q. Did he say anything else?

A. Yes, sir.

Q. What else?

A. He requested us as members of the Committee on Gas of Springfield not to have any intercourse or make any statements to [fol. 123] any communicating sections, such as Rosedale, or St. Albans, and in fact we were required by one another not to speak about it.

Q. When was the next talk with Mr. White?

A. There was more.

Q. Was there more at that conversation?

A. Yes, sir.

Q. What was the rest?

A. After a good deal of talk, Mr. White said, "I will tell you something that I would not tell to any other committee, and I will tell you that we have already placed in our budget for this year the amount necessary for bringing gas to Springfield," and moreover he said, "We have already the amount of pipes for the installation.

Q. Did he say he had the pipes in Springfield?

A. No, sir; in Jamaica.

Q. When was that talk you had with him?

A. As far as I can remember, that was in 1916, in October.

By Deputy Commissioner Glennon :

Q. It was the first meeting you had with Mr. White, was it not?

A. Yes, sir, as far as I can remember.

By Mr. Hazelton:

Q. When was the next talk with him after that?

A. At Mr. Izor's house in Laurelton.

Q. What was that talk you had there?

A. I cannot put it into words.

Deputy Commissioner Glennon: Just as much as you can remember.

A. (Continuing:) A letter had been received by Mr. Izor stating that all the dealings with the Brooklyn Union Gas Company was all humbug, and that the entire work of the Committee would amount to nothing.

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

By Deputy Commissioner Glennon:

Q. Was that referred to in the course of the conversation?

A. I am coming to that, sir. Mr. White appeared and was introduced and we had a general talk, and he heard of this letter, and in winding up his speech to us he said, "Gentlemen, you know I am not always going to be in the employ of the gas company, and I want to show you that I deal straight, and want to be able to look into your eyes."

Q. Did that complete the conversation?

A. That completed that conversation with Mr. White; yes, sir.

By Deputy Commissioner Glennon:

Q. Was anything said, at any time, when gas might be expected there, if at all, by Mr. White?

A. Yes, sir. Mr. White said the troubles they had were not labor, but probably the purchase of lead or thread; I cannot say exactly which it was.

By Mr. Hazleton:

Q. Some material. Did he say when you could expect gas?

A. Gas within sixty days; if the material was on hand we could have the installation.

Q. When was the date of this second talk?

A. In Mr. Izor's house, in December, 1916.

[fol. 125] Q. Did you have any further talk with Mr. White after that?

A. Yes, sir.

Q. When?

A. At a public meeting, when Mr. White appeared at a meeting, March, 1916—I cannot see it from here—Mr. White appeared at a meeting in Springfield.

Q. What did he say there?

A. Beg pardon, I am not going to make a statement beyond this,

that as a member of that Committee, both Mr. Berthold and myself had not been notified that Mr. White would appear there; I do not know why.

Q. What did Mr. White say?

A. When Mr. White got there he produced a book, and he told us in five words the company would not furnish gas into Springfield.

Q. Did he give any reason?

A. Yes, sir; the increase in the price of material, not of labor.

Q. Did he say whether or not they expected to be able to introduce gas?

A. Never.

Q. Did you have a talk with Mr. White at that time?

A. Absolutely, sir.

Q. After the meeting?

A. At the meeting, during the meeting.

Q. What was the talk?

A. I charged Mr. White with bad faith to the Committee and people of Springfield.

Q. What did he say?

A. He could not say anything.

Mr. Hazleton: If it pleases the Commissioner, if he deems it advisable, I can introduce at this point advertisements appearing in the New York papers showing the great building movement contemplated in the Springfield section. Of course, they are advertisements.

[fol. 126] Deputy Commissioner Glennon: It is not necessary.

Mr. Hazleton: I do not think it is. Do you wish to cross-examine?

Mr. Dykman: May I have just a moment to speak to my Assistants?

Deputy Commissioner Glennon: Yes.

Mr. Dykman: No cross-examination.

Mr. Hazleton: I will call Mr. Henning, Springfield Avenue, Springfield.

RICHARD J. HENNING, Springfield Avenue, Springfield, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Mr. Henning, how long have you lived in Springfield?

A. Nearly four years.

Q. Have you ever had a talk with Mr. White whom you heard mentioned here?

A. Yes, sir.

Q. How many?

A. One.

Q. When was that; last March?

A. Yes, sir.

Q. What was the talk you had with him last March?

A. I asked Mr White—

Mr. Dykman: Please state where.

Mr. Hazleton: I will bring that out.

A. (Continuing:) I asked Mr. White, I said, "What was the pipe intended for," and he said "To lay the mains to Springfield." I said, "Is the pipe still there?" He said, "Yes." I said, "Is there enough to lay the mains to Springfield," and he said, "No, not near enough."

[fol. 127] Q. Did that complete the conversation?

A. Yes, sir.

Q. Was that had at the public meeting which you have heard testified to here?

A. Yes, sir.

Q. At the public meeting?

A. Yes.

Mr. Hazleton: That is all.

Mr. Dykman: No cross-examination.

Deputy Commissioner Glennon: Is that all your witnesses?

Mr. Hazleton: We have one more witness, and that will complete our testimony.

I will call Mr. Winslow.

CHARLES H. WINSLOW, Ocean Avenue, Rosedale, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Mr. Winslow, you are an attorney and counsellor-at-law?

A. Yes, sir.

Q. Did you have charge of the obtaining of the signatures to these cards which have been offered in evidence in the Rosedale section?

A. I did, in connection with Mr. Hunt.

Q. Was the plan followed which you have heard Mrs. Smith and Mr. Schabehorn describe here?

A. Not so much in detail, but the general plan was the same.

Q. What is the class of houses constructed in Rosedale?

A. They are houses ranging from \$2,800 to \$10,000; that is on a pre-war basis.

Q. Have you been engaged in real estate development in Rosedale?

A. Incidentally.

[fol. 128] Q. Would you say that the absence of gas has retarded building in that section?

A. Yes, I would.

Q. And the introduction of it into that section would increase building and bring dwellers there?

A. I have no doubt it would.

By Mr. Deegan :

Q. Are those mostly one-family houses, or two-family houses?

A. I do not know more than two buildings in Rosedale that are two-family houses.

Q. The rest are private residences, and are occupied all the year?

A. Yes, sir.

Q. Do you know whether any of those houses are piped for gas?

A. In most instances they are piped for gas.

By Mr. Dykman :

Q. I got a letter from you this morning, C. H. Winslow, enclosing a list. Is this the list of cards which you obtained under your supervision?

A. That list contains the names, and the lists are all numbered A 1, 2, 3, and those houses are all indicated on the map by the same number, so, if you will take the numbers you can locate the number of the houses.

Q. Are you familiar with those people and know the neighborhood generally?

A. I know most of them.

Q. I found Samuel L. Smith at 82 Clinton Avenue?

A. Yes, sir. You will find it there three times.

Q. I find it at least six times, Samuel L. Smith, with 2 in parenthesis (2), in Clinton Street?

A. That means that he owns two houses.

[fol. 129] Q. And then I find Samuel L. Smith with a 3 in parenthesis (3) at 84 Clinton Street?

A. That means that he owns three houses.

Q. Then these Smith people own six houses?

A. No, sir, two houses on Clinton Street, and one house on another street, making three all told.

Q. Does he live in one of them?

A. He lives in one and rents the other two.

Q. Who occupies those other two houses?

A. I could not give you the names.

Q. Do you know whether they are also on this list?

A. I could not say so.

Q. They may be, for all you know?

A. They may be, and possibly are.

Deputy Commissioner Glennon: Is that all?

Mr. Dykman: Yes, sir.

Mr. Hazleton: That is all.

Deputy Commissioner Glennon: When will we set the case down for another hearing?

Mr. Hazleton: Counsel for the Commission has views to express concerning that and I want to be agreeable.

Mr. Deegan: I suggest a week's adjournment, if agreeable to you.

Deputy Commissioner Glennon: Do you want to go on tomorrow morning?

Mr. Hazleton: I am not going to introduce any more testimony I reserve the right to prove those cards, and with that I quit.

Mr. Deegan: I do not intend to put anything in.

Mr. Dykman: Frankly, I am not prepared with all my witnesses to go ahead.

[fol. 130] Deputy Commissioner Glennon: When will you be prepared?

Mr. Dykman: I would like more time, if I may have it.

Discussion off the record.

Deputy Commissioner Glennon: We will adjourn this case for one week from today at 10:30 o'clock A. M.

Whereupon, at 4:30 o'clock P. M. on the 8th day of July, 1919, the hearing in the above-entitled matter was adjourned until July 15, 1919, at 10:30 o'clock A. M.

Last Exhibit No. 9.

[fol. 131] STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Hearing Order in Case No. 2376

Before Hon. Edward J. Glennon, Deputy Commissioner

New York City, July 15, 1919.

Met pursuant to adjournment at 10:30 o'clock A. M.

Appearances: E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District; Messrs. Cullen & Dykman, appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. Crumney, Esq., of [fol. 132] Counsel; Edgar F. Hazleton, Esq. (Post Office Building, Fulton Street, Jamaica, N. Y.), appearing for the Citizens Central Gas Committee of the Fourth Ward of the Borough of Queens; Messrs. Aron & Wise (50 Pine Street, New York City), appearing for Hathron Homes Corporation and the Land Credit Corporation (by M. J. H. O'Connell, Esq., of Counsel).

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains to Springfield, Laurelton and other localities.

Mr. Deegan: Ready for the Commission.

Mr. Dykman: Ready.

Mr. Hazleton: If the Commission please, the committee desires at this point to offer some additional testimony which will be very brief, and will not take more than five minutes, if Mr. Dykman has no objection.

Deputy Commissioner Glennon: Proceed.

Mr. Hazleton: I will ask Mr. Decker to take the stand.

L. E. DECKER, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. What is your residence, Mr. Decker?

A. Springfield.

Q. How long have you resided there?

A. About 45 or 50 years.

[fol. 133] Q. Do you remember an official of the gas company by the name of John Jordan?

A. Yes, sir, I do.

Q. You knew him personally, or you met him personally on various occasions, did you not?

A. Yes, sir, I did.

Q. What position did he hold in the Brooklyn Union Gas Company?

A. I do not know his title; I did not know his title at that time.

Q. But you did know that he was an official?

A. Yes, sir, I knew he was an official.

Q. Did you ever have a talk with him relative to introducing gas into Springfield?

A. Yes, sir.

Q. When was that talk had?

A. As near as I can remember, it was about 20 years ago.

Q. Was was the talk you had at that time?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial, and as far too remote.

Deputy Commissioner Glennon: Was this Mr. Jordan an officer of the company?

Mr. Dykman: It is generally known that he was the president for years, but that is over 20 years ago, and I object to the question as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

Q. What was the talk?

A. After having some conversation and after he had looked over the maps, etc., he said that there was not sufficient residents there, he said there was not enough residents there, but he guaranteed that in five years we would have gas.

[fol. 134] Q. Did he use those words?

A. Yes, sir.

Q. Who was present when that statement was made?

A. Mr. Roberts and Mr. Gross.

Q. Are either of those men present here this morning?

A. Mr. Roberts is dead.

Q. I do not believe Mr. Gross is here, is he?

A. I do not see him.

Mr. Hazleton: That is all.

By Deputy Commissioner Glennon:

Q. What street do you live on in Springfield?

A. On the corner of Merriek Road and Springfield Avenue.

By Mr. Hazleton:

Q. You say the other witness to that conversation was Mr. Roberts, and that Mr. Roberts is dead, but Mr. Gross still resides in Springfield; is that correct?

A. Yes, sir, that is right.

By Deputy Commissioner Glennon:

Q. Are you a house owner?

A. Yes, sir, I own a house.

Q. You own the house in which you live, do you?

A. Yes, sir, I own the house.

Q. Do you own any other property in that particular vicinity?

A. No.

By Mr. Hazleton:

Q. You are in the general contracting business, and have been for some years, are you not?

A. Yes.

By Deputy Commissioner Glennon:

[fol. 135] Q. Do you desire to have gas supplied to your premises?

A. Yes; oh, yes. I got my house all piped, think it would be there before this time.

By Mr. Dykman:

Q. Are you not also in the real estate business, Mr. Decker?

A. I used to be, but not any more.

Q. How long have you been out of it?

A. About two months.

Mr. Hazleton: That is all.

Mr. Dykman: Just one other question.

Q. I do not suppose you gave it up so as to qualify as a witness at this proceeding?

A. No. I gave it up because it took up too much of my time in the summer time when I needed my time, and in the winter time when I had time to spare, I did not have any business.

By Deputy Commissioner Glennon:

Q. There is not very much money in it, is there?

A. There is not, unless you are located in the right locality.

Mr. Hazleton: That is all with this witness. I will call Mr. Seaman.

MATTHEW R. SEAMAN, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Where do you live, Mr. Seaman?

A. Elmore Street, Springfield, Long Island.

[fol. 136] Q. How long have you lived in Springfield?

A. I have lived there twice. It is 20 years all told; I have lived there about nine years the second time.

Q. Do you know Mr. White who has been mentioned here?

A. I do not know him, but I heard him.

Q. You were present at the meeting where he spoke and addressed the Springfield Civic Association in March of this year, were you not?

A. Yes, sir, in Good Templars Hall; I was there.

Q. Do you recall his talk?

A. Yes.

Q. Did he mention in that talk his opinion as to the residents of Springfield and the surrounding localities, calling their desire for gas to the attention of the Public Service Commission?

A. Yes, sir, he did.

Q. What did he say?

Deputy Commissioner Glennon: Where was that, and what was the time?

Mr. Hazleton: In March. I fixed it in March, 1919.

A. There was only one meeting.

Q. What did he say in reference to that matter?

A. There was a gentleman arose and asked him what we could expect if we took it up with the Public Service Commission, and Mr. White said, "You will get the same deal as Douglaston got." That was prior to the decision of the Federal Court.

Q. Who was the gentleman that asked him the question?

A. I think it was a gentleman from Jamaica, Jamaica South, or Jamaica Junction, but I cannot think of his name. I will try to recall his name later on if I can.

[fol. 137] Q. Do you remember Dr. Berthold asking Mr. White if he had not pledged his word of honor to extend the gas into Springfield?

A. Yes, sir, I remember that.

Q. What did Mr. White say in response to that question?

A. He said that the reason why they could not do it was because they had to help lick the Kaiser.

Mr. Hazleton: That is all for this witness.

By Deputy Commissioner Glennon:

Q. Are you still a resident of that section?

A. Yes, sir, I am chairman of the Central Gas Company, and also chairman of the Gas Committee of the Springfield Association.

Q. Naturally you desire to have gas installed into that neighborhood?

A. Yes, sir, I do.

Q. Is your house piped?

A. Yes, sir, my house is already piped.

By Mr. Hazleton:

Q. That is the general sentiment that prevails out there, is it not?

A. Yes, sir.

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: I will sustain the objection.

Mr. Dykman: I move to strike out the answer.

Deputy Commissioner Glennon: Motion granted.

Mr. Hazleton: That is all.

Deputy Commissioner Glennon: Is there any cross-examination?

[fol. 138] Mr. Dykman: No cross-examination.

Mr. Hazleton: I will call Mr. Collins.

WINFIELD S. COLLINS, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Where do you reside, Mr. Collins?

A. Roseland Avenue, Springfield.

Q. How long have you resided in Springfield, Mr. Collins?

A. About three years.

Q. Were you present at the meeting that Mr. White addressed in Good Templars Hall in March, 1919?

A. I was.

Q. Did you hear him make the statement as to how the committee or the residents of Springfield would fare if they brought the matter before the Public Service Commission?

A. I did, yes, sir.

Q. Did you hear him say that?

A. I did.

Q. What did you hear him say?

A. He referred to the Douglaston case and stated that we could see what they got.

Q. Was the question asked him?

A. Yes, sir, the question was asked him by Mr. Ickhorn.

Q. What did Mr. Ickhorn ask him?

A. That we were to get—

Q. What did he ask about the question, as you recall it?

A. That if we brought the matter to the attention of the Public Service Commission that we would receive gas sooner.

Q. What did Mr. White say in reply to that?

A. He referred to the——

Q. What did he say?

A. He said, "Look at Douglaston, what they got."

[fol. 139] Q. Do you remember Dr. Berthold asking Mr. White a question there?

A. I do.

Q. What was the question, as you recall it, that was asked him?

A. "Mr. White, on your word of honor, did you, or did you not, promise that we would have gas?"

Q. What did Mr. White say in response to that?

A. "Yes, but we had to lick the Kaiser first."

Mr. Hazleton: That is all for this witness.

By Mr. Dykman:

Q. Did you think there was anything personal about that?

Mr. Hazleton: I object to the question as incompetent, irrelevant and immaterial.

Mr. Dykman: You brought it out.

Deputy Commissioner Glennon: Objection sustained.

Mr. Dykman: Exception.

By Deputy Commissioner Glennon:

Q. Do you own your own house down there?

A. Yes, sir.

Q. Are you willing to take gas if the mains are installed in Springfield?

A. Yes, sir.

Mr. Hazleton: That is all for this witness. Mr. Mulz, will you take the stand?

GEORGE MULZ, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Where do you reside, Mr. Mulz?

A. Dean Street, Jamaica.

[fol. 140] Q. Mr. Mulz, are you connected with the Queens County News?

A. I am.

Q. Were you present at a meeting in March, 1919, in Good Templars Hall, in Springfield, which meeting was addressed by Mr. White?

A. I was, yes, sir.

Q. Do you remember Mr. Iekhorn asking Mr. White a question?

A. I do.

Q. What did Mr. Iekhorn ask Mr. White?

A. Mr. Iekhorn asked Mr. White if the people of Springfield and adjoining communities, would fare better if they brought the case before the Public Service Commission?

Q. What did Mr. White say?

A. Mr. White referred to the decision of the Douglaston case, and he said, "You see what Douglaston got."

Q. Do you recall Dr. Berthold asking Mr. White a question?

A. I do.

Q. What was the question that Dr. Berthold asked Mr. White?

A. Dr. Berthold asked Mr. White if he did not, upon his word of honor, promise gas to the people of Springfield.

Q. What did Mr. White say?

A. He said he did, but they had to lick the Kaiser first.

Mr. Hazleton: You may question him, Mr. Dykman.

Mr. Dykman: No cross-examination.

By Mr. Hazleton:

Q. You are not a resident of Springfield, are you?

A. No, sir, I am not.

Q. You know the section and the pipe that is upon that section, and that was delivered there by the gas company in the City of Jamaica, do you not?

A. I do. It has been there for a considerable time.

[fol. 141] Q. The section and pipe that has been described throughout this proceeding?

A. Yes, sir. They are located at Sutphin Avenue and Chichester Avenue, Jamaica. They have a watchman there day and night watching the pipes.

Q. I show you a picture and ask you if that is a true representation of conditions as they existed there on March 29th, 1919, as to the pipe being upon the land?

A. In Jamaica, you mean?

Q. Yes.

A. Yes, sir, it is.

Q. That is a true representation?

A. Yes, sir.

Q. This applies to the pipe that has been mentioned throughout this proceeding?

A. Yes; and also Mr. White admitted that that was pipe intended for use in Springfield.

Q. When did he say that: was that at that meeting in March?

A. Yes, sir.

Q. Was he asked that question about the pipe?

A. Yes, sir, he was asked that question by Mr. Henning; he asked him whether the pipe was intended for Springfield, and Mr. White said yes, it was.

Mr. Hazleton: I offer that picture in evidence.

Mr. Dykman: No objection.

Deputy Commissioner Glennon: It will be received.

The picture was received in evidence and marked Complainants' Exhibit No. 10, of this date.

By Deputy Commissioner Glennon:

Q. Is there more pipe there than indicated in this picture?

A. There is.

Q. The pipe has now become very rusty, has it not?

A. Some of it, yes, sir.

[fol. 142] Q. Most of it has, as a matter of fact, has it not?

A. Yes, sir.

Q. That is what you can see of it by the naked eye, without taking the pipe down?

A. Yes, sir.

Q. It has been out in the weather for some time, has it not?

A. Yes, sir, it has been there for four or five years.

Deputy Commissioner Glennon: I had the pleasure of seeing it on Friday last.

Mr. Hazleton: Yes, sir, so I have been informed.

Cross-examination by Mr. Dykman:

Q. Are you personally acquainted with Mr. White?

A. I am not, no, sir.

Q. Have you ever talked him?

A. No, sir.

Q. I understand you to say that this picture is not an accurate representation—

Mr. Hazleton: He did not say that.

Mr. Dykman: Yes, he just said that.

Deputy Commissioner Glennon: His testimony, as I recall it, was that it was a fair representation of the pipe, in response to a question asked by counsel.

The Witness: We only had a small camera.

Deputy Commissioner Glennon: The question I asked him was if it covered all the pipe in this particular lot, as indicated by the picture, and he said that it did not quite cover all the pipe.

Mr. Dykman: Then, as I understand it, we are all agreed that this is not an accurate picture of the conditions existing there.

[fol. 143] Mr. Hazleton: I contend that it is, Mr. Commissioner.

Deputy Commissioner Glennon: It is simply a fair representation of the conditions.

Mr. Dykman: Am I to understand that only the picture is in evidence and none of the writing?

Deputy Commissioner Glennon: Yes, that is all.

Mr. Hazleton: Yes.

Mr. Dykman: No further questions.

Mr. Hazleton: That is all with this witness. I will ask Mr. Wells to take the stand.

WALTER B. WELLS, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Where do you live, Mr. Wells?

A. I live at 3830 Ferris Street, Woodhaven, Long Island.

Q. Mr. Wells, you are an architect and builder, are you not?

A. Yes, sir.

Q. Are you at present engaged in building some houses at Springfield?

A. Yes, sir, I am.

Q. How many houses are you building?

A. I am building five.

Q. Where are they being built?

A. They are at the corner of Clinton and Claremont, and two of them are at Washington near Central.

Q. And they are being piped for gas?

A. Yes, sir.

Q. You are having them piped?

A. Yes, sir.

[fol. 144] Mr. Hazleton: That is all.

Mr. Dykman: No cross-examination.

By Deputy Commissioner Glennon:

Q. What is the value of the houses which you are now constructing?

A. Approximately \$5,000.

Q. That is, the actual cost of construction is \$5,000?

A. The actual cost is about \$4,000.

Q. And you estimate the value of the real estate, the land, to be worth \$1,000?

A. About that.

Q. Are you the owner of these buildings?

A. No, sir.

Cross-examination by Mr. Dykman:

Q. Are these houses also being piped, or whatever you call it, for electricity?

A. Yes, sir, they are.

Q. They will have electricity in them, will they?

A. Yes, sir.

Mr. Dykman: That is all.

Mr. Hazleton: That is all. I will call Mr. Babratz to the stand.

GEORGE BABRATZ, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Where do you live, Mr. Babratz?

A. Washington Avenue, Springfield.

Q. How long have you lived in Springfield?

A. Six years.

Q. Are you building any houses there at the present time?

A. No.

[fol. 145] Q. Are you contemplating building any houses there?

Mr. Dykman: I object to the question as incompetent, irrelevant and immaterial, and far too remote.

Deputy Commissioner Glennon: It is not too remote; you do not mean that, do you?

Mr. Dykman: Incompetent, irrelevant and immaterial, and too remote.

Deputy Commissioner Glennon: Reframe your question.

Q. Have you filed plans for building any houses there at the present time?

A. No, but I have them prepared.

Q. Do you intend to proceed immediately with the construction of those houses?

A. I postponed the construction of the houses; I decided to do that two weeks ago.

Q. What is the reason for postponing the building of the houses?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

A. On account of not being able to get the gas.

Q. If gas is installed there, will you erect those two houses and pipe them for gas?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

[fol. 146] A. Yes, sir.

Mr. Hazleton: That is all.

By Deputy Commissioner Glennon:

Q. How many houses are you preparing plans for?

A. One house on each side; I intend to build one house on each side of my house.

Q. Are you desirous of having gas installed in your own home?

A. Yes, sir, I am.

Mr. Hazleton: That is all. I will ask Mrs. Kennedy to take the stand.

Mrs. CATHERINE KENNEDY, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Hazleton:

Q. Where do you live, Mrs. Kennedy?

A. Madison Avenue, Cedarhurst, Long Island.

Q. Do you own any property in Springfield?

A. No, sir, I do not, but I do in Rosedale.

Q. In Rosedale?

A. Yes, sir.

Q. Would you, if gas were installed in your section in Rosedale, immediately proceed with the construction of any houses?

A. I would——

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

Q. Would you, Madam?

A. That is what I bought the property for; yes, sir.

Q. How many houses?

[fol. 147] By Deputy Commissioner Glennon:

Q. Did you buy it for the purpose of building on it?

A. Yes, sir. When I bought them, they told me that gas would be there in four or five years.

Q. How long ago was that?

A. I would have to give them away now. That is ten years ago. I put in \$1,180 into this property, and I would have to give them away now, because nobody would live there without gas.

By Mr. Hazleton:

Q. If gas were installed there, you would construct two houses; you would proceed with the construction of two houses?

A. Positively. Yes, sir.

Mr. Dykman: I assume, Mr. Commissioner, that I may have a sort of a long standing objection to all this

Deputy Commissioner Glennon: You can take an exception each time you see fit.

Mr. Dykman: Yes, I know, but it takes time to make an objection every time.

Cross-examination by Mr. Dykman:

Q. From whom did you buy this property?

A. From the Carrollton Realty Company.

Q. Do you know who the men were that were interested in that company?

A. I could not tell you.

Q. Who was the man you did business with?

A. A man in the Park Row Building, downtown. That is where I send my check every month.

Q. Do you know his name?

A. No, sir, I do not. His name must be there in the deed. (Handing deed to counsel.)

[fol. 148] Q. The deed is signed by Edward J. Carroll, as President.

A. Yes, sir.

Q. Is Mr. Carroll the man you did business with?

A. Yes. I could not recall his name.

Q. Is he the man who promised that you would have gas?

A. Yes; he is the man; the Carrollton Realty Company promised me gas.

Mr. Dykman: That is all.

Mr. Hazleton: Mr. Commissioner, I will have the rest of these cards properly authenticated, if you want that done at the present time. The witnesses are here and I can do it.

Deputy Commissioner Glennon: I think we might just as well do it.

Mr. Hazleton: I will ask Mr. Boyce to take the stand.

[fol. 149] Mr. Dykman: I will ask Mr. Waldron to take the stand.

JOHN H. WALDRON, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Dykman:

Q. What is your occupation, Mr. Waldron?

A. Assistant Superintendent of the Street Department of the Brooklyn Union Gas Company and subsidiary companies, one of which is the Woodhaven Gas Light Company.

Q. How long have you been connected with that company?

A. 12 years.

Q. I show you, Mr. Waldron, Company's Exhibit No. 1 for Identification, and ask you if that map—have you seen that map before, and will you tell the Commission what connection you had with it?

A. It is a picture layout of the section known as Springfield, and adjoining localities which I see on here plotted, of the buildings as they existed on May 25th, 1919.

Q. What connection did you have with that plotting?

A. I went out over the section and plotted all of the buildings myself.

Q. How are the buildings represented by the map?

A. By black dots.

Mr. Dykman: I offer that in evidence.

The paper heretofore marked Company's Exhibit No. — for Identification, was received in evidence and marked Company's Exhibit No. 1, of this date, in evidence.

[fol. 150] Q. Mr. Waldron, I show you another map, and ask you if you have seen that map before, and if you have, what connection you had with it?

A. It is another print of the map which is in evidence, and the only change on this map—the addition is the checking of the list of Mr. Hazleton, against the number of people who are on that list, in the different localities as indicated on the map.

Q. On the day of the last hearing I handed you this list of names which was also in evidence, called "Springfield names"; what did you do with it; it is Committee's Exhibit No. 8; what did you do with it?

A. As best could be done, I checked the street locations, against the several localities in this section. It was difficult to take them all off, because nearly every one of these localities has a duplicate set of names. For instance, Higbie Avenue runs through several of them; Farmers Avenue, Merriek Road, and the like, where the names of the street are duplicated, and you could not check them to cover the locality. So therefore, these numbers are simply given where the streets are not duplicated.

Q. Have you put any symbols on that map, or figures?

A. Yes, sir.

Q. Just what do they represent?

A. They represent the number of names that I could locate against the locations given me in those territories.

Q. Subject to the difficulty of the similarity of names, of which you speak?

A. Yes, sir.

Q. You put figures on this map in circles in red ink?

A. Yes, sir.

Q. Will you start and read to the Commissioner, tell the Commissioner the names of the localities which you have marked in red ink, as containing two names on this list, Committee's No. 8?

[fol. 151] Deputy Commissioner Glennon: Does the exhibit show it marked in ink?

Mr. Dykman: Yes, sir.

Deputy Commissioner Glennon: Do you intend to offer it in evidence?

Mr. Dykman: Yes, sir.

Deputy Commissioner Glennon: It will save time by offering it, and I can look at it when it is in evidence.

Mr. Dykman: I would like the record to show the names of the communities, because there have been more or less discussion through the case in regard to this.

Deputy Commissioner Glennon: This witness is going to testify that he has marked particular names on the map in red ink?

Mr. Dykman: Yes, sir.

Deputy Commissioner Glennon: And you now want him to relate what names appear on that map?

Mr. Dykman: Yes, sir, about six names.

Deputy Commissioner Glennon: All right, go ahead.

Mr. Dykman: It won't take long.

By Mr. Dykman:

Q. Take one at a time, Mr. Waldron.

A. St. Albans, we found 99.

Q. I just want the names of the places on that map where you found them.

A. St. Albans, Springfield, Laurelton, Rosedale Terrace, Rosedale, Locust Manor, Locust Lawn, South Jamaica Place, Idlewild Park, Jamaica Junction, Hick View Park, Springfield Park, Sheffield Manor, Jamaica Gardens, and Bay View Landing.

[fol. 152] Q. How many names did you find on Exhibit No. 8 in Bay View Landing?

A. 42.

Q. Did you find any names on Exhibit No. 8 which were not on this map?

A. Yes, I found several down in the lower part of the southeast corner of Queens County.

Q. If this map were continued on the same side, about how far off this map, in inches, would those last people be?

A. It would necessitate about a six inch page on the map.

Q. So in order to get in some of the people on Exhibit No. 8, you would have to add six inches to this map?

A. Approximately.

Mr. Dykman: I offer it in evidence.

Mr. Hazleton: No objection.

The paper was received in evidence and marked Company's Exhibit No. 11, of this date.

By Mr. Dykman:

Q. Mr. Waldron, your work is as assistant to Mr. White, is it not?

A. Yes, sir.

Q. Did you go with Mr. White to the house of Mr. C. Izor at any time, in connection with the extension in Springfield?

A. Yes, I went down with Mr. White when he addressed the Gas Committee at Mr. Izor's house.

Q. I did not hear what you said.

A. I said I went down with Mr. White when he addressed the Gas Committee at Mr. Izor's house.

Q. When was that?

A. May 2nd, 1917.

Q. Who was there?

A. Mr. Izor, as Chairman; Messrs. Nostrand, Holmes, Schabehorn and Dr. Berthold.

[fol. 153] Q. Will you tell the Commissioner as near as you can recall, giving the conversation, wherever you are able to, what happened at that meeting; what was said?

A. The general reference by Mr. White——

Q. What was the subject of the conversation first?

A. Why, the supplying of gas to that section.

Q. Who did the talking?

A. Mr. White.

Q. On the other side, or any one man?

A. Mr. Izor spoke, Mr. Schabehorn spoke considerably about some houses he intended to build. There were five houses he said he would build some day if he had gas, and then Mr. White went into the details of the extension, telling them how we had ordered pipe early in 1916, pipe ordered early in 1916, that at that time had not been delivered, some of the pipe which might be available for Springfield. He also told them of our inability to get any lead at that time; he also brought out the fact of the United States having entered the war, that our labor was considerably cut down, our men were guarding plants; others were being taken in the draft, and he went into the advancing cost of material as had already been felt.

Q. Is that all?

A. Unless I come to the conclusion.

Q. I want you to tell in your own way what happened; go ahead.

A. In concluding, Mr. White said, he told them we were unable to say at that time just what could be done, owing to the conditions that existed, and the way they were changing, owing to the war, which made it impossible to make any definite statement, but that the matter could again be taken up in six months, when perhaps something more definite could be arrived at.

[fol. 154] Q. You have heard Mr. Schabehorn's testimony?

A. Yes, sir, I have.

Q. You have heard Mr. Schabehorn testify that Mr. White said on this occasion he was glad of the opportunity to go to Springfield, because of the mission he came on, and that conditions were such that there had not been time to carry out their programs, to carry out their work, but that they were going right ahead with the work; is it or is not a fact that Mr. White used those words?

A. I did not hear Mr. White make any such statement and I was with him all the time.

Q. You heard Mr. Schabehorn say in answer to a question "A. Yes, sir, I am trying to think of the particular point. I cannot recall, of course, the exact substance that he put it in, but we were given the assurance that the work was about ready to start. We were assured that within two or three months, at the very latest, the work would be under way." Did you or did you not hear Mr. White make such a statement?

A. There was no such statement made.

Q. You recall Dr. Berthold's testimony in relation to Mr. White at this meeting at which he said that they were willing to introduce gas into Springfield. Did you hear any such statement as that?

A. We were willing to introduce it into Springfield?

Q. Yes.

A. I do not recall any such statement.

Q. That was not at the meeting you attended? At this meeting, Mr. Waldron, you recall Dr. Berthold testified in answer to a question by Mr. Hazleton relative to Mr. White, "Q. Did he say when you could expect the gas?"

A. Gas within sixty days; if the material was on hand we could have the installation."

— Did you hear Mr. White make any such statement, Mr. Waldron?

[fol. 155] A. No, sir, I did not.

Q. Were you present at this meeting in March, 1919, which Mr. White addressed in Good Templars Hall; did you go there with him?

A. Yes, sir.

Q. Did you stay with him during the evening?

A. All evening.

Q. You heard his speech?

A. I heard his speech.

Q. Did you hear any conversation between him and Dr. Berthold?

A. I did.

Q. Will you tell the Commissioner what the conversation was, when it took place, and the different details?

A. After Mr. White had talked with the people, and displayed the map, explaining the conditions just as they are in general there, he told them how at this time it was impossible to supply the communities. Dr. Berthold got up and accused Mr. White of bad faith, and he talked much, but his whole statement was that Mr. White had not kept his faith with the people down there. Mr. White's reply was that unfortunately in the first place, we had war, and we had to go across and lick the Kaiser, and then he told the doctor, just as I have said before, of the conditions as they existed, as he said in his speech. That is practically all there was to the talk with Dr. Berthold.

Q. Dr. Berthold has testified that he charged Mr. White with bad faith to the committee, and the people of Springfield, and in answer to a question he testified?

"Q. What did he say?

A. He could not say anything.

Q. Is that true?

A. No, he did say something.

Q. He said he would have to lick the Kaiser first?

A. That is in his opening. He said he would have to lick the Kaiser first."

[fol. 156] By Deputy Commissioner Glennon:

Q. Who was going to lick the Kaiser?

A. No, he meant that we had sent boys across to lick the Kaiser. That is what Mr. White's statement meant.

By Mr. Dykman:

Q. Do you recall an inquiry made of Mr. White by somebody, "What would happen if the Committee went to this Commission with their case?"

A. Yes, there were several questions asked Mr. White that night, and one of the gentlemen from Jamaica Junction got up and asked Mr. White what would happen if they went to the Public Service Commission, and Mr. White replied, "Gentlemen, that is your privilege."

By Deputy Commissioner Glennon:

Q. Did he say anything about Douglaston at all?

A. Douglaston was not mentioned.

Q. You did not hear him say anything about Douglaston?

A. No, sir, I did not.

By Mr. Dykman:

Q. How near Mr. White were you?

A. I was within a few feet of him all the time.

Deputy Commissioner Glennon: I suppose there was something other than complete peace and quiet?

The Witness: It was not all peace and quiet.

Mr. Dykman: That is all.

[fol. 157] Cross-examination by Mr. Hazleton:

Q. How many were present at that meeting?

A. I did not count them.

Q. About how many?

A. I should say about 150 or 200 people.

Q. And if 100 of those people come here and testify that such statements had been made by Mr. White, would that refresh your recollection or change your testimony?

A. Why——

Q. Yes or no?

A. No.

Q. You have testified rather rapidly here, in regard to names of places that were included on your map?

A. Yes.

Q. That is, St. Albans, Springfield, Laurelton, Rosedale Terrace, Rosedale, Locust Manor, Locust Lawn, South Jamaica Plains, Idlewild Park, Jamaica Junction, Hick View Park, Springfield Park, Sheffield Manor, Jamaica Gardens, and Bay View Landing. Is that right?

A. There are 15 in all.

Q. I have mentioned all the places?

A. There are 15 in all.

Q. Of course, you know where Bay View Landing is, do you not?

A. I do.

Q. That is on Jamaica Bay?

A. Close on the Bay.

Q. You know that this committee does not ask to have gas extended in there, don't you?

A. Why——

Q. Do you or do you not know that, Mr. Waldron?

A. I know the locations given may include Bay View Landing.

Q. If I inform you that it is not the desire of the committee that gas be extended in there——

Mr. Dykman: I object to that as immaterial.

[fol. 158] Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

Q. Would that change your opinion if I inform you in regard to what the Committee desires?

A. You submitted a list showing the location of the people who signed these cards, who wished gas, and I checked this list against the streets, and the streets as you have given them go all through that section down there, as far east as the corner of Queens County.

Q. Did you go into Bay View Landing?

A. Yes, sir.

Q. Did you find any person signing any cards which have been introduced, in that section?

A. I have not gone——

Q. Did you or did you not?

A. I have not gone through Bay View Landing on the cards.

Q. Then you have not found any one in Bay View Landing who has signed any card introduced in evidence?

A. No, I have not found——

Q. That is an answer.

Deputy Commissioner Glennon: Wait a minute.

By Deputy Commissioner Glennon:

Q. Did you find the names on the list submitted to you by Mr. Dykman?

A. I have taken that list and checked the address, or rather the location given against the names given with my map. I have not been out on the territory to check this list. I have only had them a few days, and it would take several days to do that.

[fol. 159] Mr. Hazleton: I believe the Commissioner is sufficiently enlightened on that.

Deputy Commissioner Glennon: Yes, sir.

By Mr. Hazleton:

Q. You have mentioned Idlewild Park in your statement?

A. Yes, sir.

Q. Have you gone into that section and found anyone who lived

there of the same name as was on any of the cards that have been introduced?

A. The answer is the same as in regard to Bay View Landing.

Q. Pardon me?

A. The answer is the same as to Bay View Landing.

Q. I want your answer here. Did you find any names down here the same as any of the cards which have been introduced in evidence?

A. On none of the cards, to check the cards we took in my office, against the list, is the location so given on the cards.

By Deputy Commissioner Glennon:

Q. That is to say, you simply referred to the map; you have not had an opportunity to go down to the section?

A. I have not had an opportunity to go down to the section and check the cards over.

By Mr. Hazleton:

Q. You understand that the Gas Committee is not asking that gas be extended into Idlewild Park, do you not?

A. Yes, sir, that is true.

Q. You have also included in that statement a place known as Hick View Park?

A. Yes, sir.

Q. Is there any such place?

A. Yes, there is a locality known as Hick View; you might call [fol. 160] it High View, but if you get the atlas, you will see that there is such a place as Hick View.

Q. I have not been able to find it.

A. There is a place by the name of Hick View Park.

Q. But you are not able to state whether or not there are any people signing the cards which have been introduced in evidence who reside in Hick View Park?

A. If they——

Q. Will you answer the question? Are you able to state that?

A. If they go through the particular location——

Q. I ask you if you are able to state that? I submit that question is capable of an answer, yes or no.

By Deputy Commissioner Glennon:

Q. Can you state it, yes or no?

A. From the cards, yes.

By Mr. Hazleton:

Q. Have you investigated any of the names of those cards in those sections?

A. Simply by checking them with the map.

Q. Did you go into the section and investigate the names?

A. With the cards.

Q. Did you visit them personally?

A. No, I did not.

Q. Or take the cards?

A. No, I did not.

Q. Did you visit them at all?

A. No, I did not.

Q. But, nevertheless, you are able to state positively that the people whose names are represented here on these cards reside in both Hick View Park and Bay View Landing?

A. I assume that the cards are true.

Q. You are willing to state positively that that is the fact?

A. On the cards, yes.

[fol. 161] Q. Upon your own knowledge?

A. By checking against the cards, yes.

Q. You have come across sections where streets, the same names of streets have been used?

A. Yes, sir, in many instances.

Q. Many instances?

A. Yes, sir.

Q. And all you did in your investigation was to check the names against the names of the streets?

A. I checked the streets against the streets.

Q. You checked the names against streets, you mean?

A. No, the streets against the streets.

Q. All you investigated was the streets given on the cards; is that right?

A. No, each street was given; just a count of the people.

Q. All you checked in your investigation was the streets; is that right?

A. No, I cannot say that. If there were a half dozen people on Higbie Avenue, there would be a count of six people for Higbie Avenue.

Q. What was that?

A. If there were a half dozen people on Higbie Avenue, there would be a count of six people for Higbie Avenue.

Q. Do you know where, on what part of Higbie Avenue they would be located?

A. Higbie Avenue happens to go right through, I think. If you will let me see the map, I will see where it goes through.

Q. About where?

A. It is rather difficult to check them without the map.

Q. It is rather a long street.

Mr. Dykman: Cannot the witness have the map?

Deputy Commissioner Glennon: Yes, surely.

Mr. Hazleton: Here is the map.

[fol. 162] The Witness: Higbie Avenue is included in a part of Jamaica Junction, and it goes directly through Hick View Park.

Q. Do you know in what part of Higbie Avenue those six names which you are mentioning were located; where did the people reside?

A. Yes, in taking hold of the cards, some of those might be, or were marked, Higbie Avenue, Jamaica Junction.

Q. But none of them were marked Higbie Avenue, Hick View?

A. No.

Q. As a matter of fact, there are three different Higbie Avenues out there, in that section, are there not?

A. If you want to break it up into different little sections, yes.

Q. I want the facts.

A. It is a continuous street. You cannot say that it is three streets.

Q. You say it is a continuous street?

A. Yes, a continuous street.

Q. Are you able to state that positively also? You say there are three Higbie Avenues?

A. I—

Q. I am not saying what your map shows. I am saying what is the physical fact?

A. You cannot take the names of the streets down there. Some streets have half a dozen different names.

Q. Then you intend to state that the names that you investigated were not taken from different streets than those you checked the cards off against on your map?

A. Many duplications of cards have been included on this list. This list does not include all the cards.

Q. You have mentioned the southeast corner of Queens County; where did you mean, out around Hook Creek?

A. Yes, several names on there come from Warnersville and Meadowmere.

[fol. 163] Q. What were the names of the people from Warnersville?

A. By reference to the list I could tell you.

Q. Did you investigate those people personally?

A. No, but Hook Creek is only one place.

Q. Do you know that the Gas Committee does not ask to have gas extended into the Hook Creek section?

A. Well, where did they get the names from, then?

Q. Do you know that the Gas Committee does not ask for that?

Mr. Dykman: I object to that as improper cross-examination.

Deputy Commissioner Glennon: I think it is cross-examination that may not be exactly proper, but let the witness refer to what he means, so we may be able to clear this up.

By Mr. Hazleton:

Q. From the southeastern corner of Queens County, who is there that you have included in that section?

A. T. M. Lucas, Hook Creek, Mrs. A. R. Young.

Mr. Dykman: I think it would be a good idea if the record shows that the witness is reading from Exhibit No. 8.

A. (Continuing:) Mrs. A. R. Young, Hook Creek, John Wolf, Hook Creek, Charles Wessel, Hook Creek, Henry Woodhurst, Hook

Creek, Charles Schaler, Hook Creek, George Ketchem, Hook Creek, George A. Humbert, Hook Creek, William Schlott, Hook Creek and C. Fish, Hook Creek.

[fol. 164] Those names are in the section designated on the atlas as Hook Creek.

Q. Do you know that the cards contained the names of those people, or do you know that the cards containing the names of those people have been introduced in evidence?

A. If your list is true, that is a copy of the cards you have submitted.

Q. You say if that list is true. I asked you if what you stated on those cards have been introduced in evidence?

A. Same answer. I have not seen your cards.

Q. I am stating that those cards are withdrawn, and not introduced in evidence.

Mr. Dykman: Which cards?

Mr. Hazleton: The cards from Hook Creek section.

Deputy Commissioner Glennon: They were withdrawn.

Mr. Hazleton: They were not introduced at any time, and the names were included on that list by mistake. Those people are not asking the Gas Committee for the extension of gas into that section. We do not ask for that.

Deputy Commissioner Glennon: You do not include that in the 980 names?

Mr. Hazleton: Not in any of the cards before the Commission, nor any cards from Meadowmere, and we do not ask for the extension of gas into Wildwood, Bay View Landing, Jamaica Gardens and the southeast corner of Queens County.

Mr. Dykman: If the Commission please, this list which the Committee has introduced in evidence, and which has been marked Ex-[fol. 165] hibit No. 8, was furnished to me on the morning of the last hearing, and my adversary has said several times that it contains the names on the cards, and if each time I produce a witness he locates one of his signers in what he considers an undesirable territory, he proposes to withdraw that undesirable person, where are we going to get off at?

Mr. Hazleton: If the Committee does not ask the extension of gas into that section, I think it eliminates that section from this proceeding.

Deputy Commissioner Glennon: There is no question about that.

By Deputy Commissioner Glennon:

Q. Are there any more sections where the names appear on your list?

A. There is one other section, a party by the name of John Mayer; it is No. 6 Bay View.

By Mr. Hazleton:

Q. Where is that, Warnersville?

A. Just northwest of Meadowmere.

Q. But the Gas Committee does not ask that gas be extended into that section.

Deputy Commissioner Glennon: Therefore, you wish to have Exhibit No. 8 corrected to that extent, by the elimination of the names in the sections that are known as Idlewild Park and Jamaica Gardens, Hook Creek—

Mr. Hazleton: Idlewild Park, Jamaica Gardens, Hook Creek, Meadowmere, Warnersville, Bay View Landing, Hick View Park and the southeast corner of Queens County.

[fol. 166] Deputy Commissioner Glennon: All those different places appear on the list which you submitted counsel, which was offered in evidence and marked Exhibit No. 8?

Mr. Hazleton: Yes, all those different names. I have endeavored to make myself clear. We are asking that gas be extended into the sections which Mr. Schabehorn has described here, and introduced a map in detail, in further description of the same.

Deputy Commissioner Glennon: I think it might be advisable, I want to know by the next hearing so as to check up that list and find out exactly how many people have signed cards are in that territory which you are asking gas be extended into.

Mr. Hazleton: I believe they are all, with the exception of those few. There have been 929 introduced in evidence here this morning, and they come from the sections into which we ask that gas be extended, and there are over 100 cards still out.

Deputy Commissioner Glennon: Do you know how many would be eliminated by your statement this morning, that you did not ask to have gas supplied to those sections?

Mr. Hazleton: We were not asking any elimination out of the 929 introduced in evidence this morning, but we have over 100 outstanding.

Deputy Commissioner Glennon: It might be well to check it up properly before the next hearing.

Mr. Hazleton: I will do that.

Mr. Deegan: I think there were 982 cards introduced before.

[fol. 167] Mr. Hazleton: There might have been an occasional name slip in by a party residing in an out of the way section, who wanted to sign the proposition asking that gas be extended to his section, but that was not the intention on the part of the Committee.

Deputy Commissioner Glennon: Those cards which are in evidence represent all the territories where you are now asking gas to be supplied to?

Mr. Hazleton: Yes, they represent all the territories to which we ask gas to be supplied, and we will have them checked up at the next hearing.

Deputy Commissioner Glennon: Is there any further cross-examination of this witness?

Mr. Hazleton: Yes, your Honor.

By Mr. Hazleton :

Q. You say you attended a meeting on May 2, 1917 ; is that right?

A. Yes, sir.

Q. That was at Mr. Izor's home?

A. At Mr. Izor's home.

Q. Was Mr. Izor Chairman of that Committee?

A. He was.

Q. Did Mr. White mention anything as to the delivery of pipes to Jamaica?

A. He mentioned in general that the order had been placed for cast-iron pipe in the latter part of 1916.

Q. For what purpose?

A. For general uses.

Q. For what uses, general uses?

A. Why general conduct of the company's business.

Q. Whereabouts?

A. Throughout the territory.

Q. What territory?

A. All the 4th Ward.

[fol. 168] Q. What was the purpose of your visit there, to discuss the introduction of gas into Springfield?

A. No, not at all; to satisfy the members of the Gas Committee. They said they had been driven by their people, and would like to make a report.

Q. But it was not the purpose of your visit there to discuss the introduction of gas into that section?

A. No, not to discuss it.

Q. Was it to discuss the general conditions of the company's territory?

A. No, not to discuss anything.

Q. But that concerned the section known as Springfield, did it not?

A. The section known as Springfield.

Q. And that is what you went there for, to report to the Committee as to your ability, or your intention to introduce gas into that section?

A. That is right.

Q. That is right. I am glad we understand each other now. And in discussing the introduction of gas into Springfield, and imparting to that Committee your views as to the intentions and ability of the company to introduced gas there, the conversation relative to these pipes was brought about?

A. The conversation relative to the pipe the company had ordered for general use, yes, sir.

Q. Then, how did that question of pipe come up when it was brought there for general use, and you were there for the purpose of discussing the introduction of gas into Springfield?

A. It is most natural when you talk about gas mains you talk about pipe.

Q. For general use?

A. For general use of the company.

Q. Was it not stated at any time that that pipe was brought there for the introduction of the extension of gas into Springfield section?

A. No.

[fol. 169] Q. Never?

A. No.

Q. For what general use was it brought there?

A. For the general conduct of the business of the companies in Queens.

Q. Did it need any pipe, when the pipe was brought there for the general conduct of the business in the 4th Ward?

A. There is always use for pipe.

Q. Did it need it at that time?

A. Yes, sir.

Q. Where?

A. In making general extensions throughout the territory.

Q. Name some of them, will you, please?

A. I would have to refer to the records of the company to see what they were.

Q. You could show that, could you?

A. That could be easily shown.

Q. Did Mr. White explain in detail that the pipe for this extension had been ordered last November?

A. No.

Q. He never stated anything along those lines?

A. No.

Q. I am now reading from Mr. Izor's report which he wrote himself, and you still say that Mr. White said nothing along those lines?

A. Nothing to the effect that the pipe had been ordered for Springfield.

Q. Did he say in substance that owing to the shortage of freight cars and congestion of freight the foundry has been unable to deliver pipe?

A. He was speaking of pipe ordered in the fall of 1916, when he said we could not get it.

Q. Deliveries of pipe for where?

A. For general orders made in 1916, for general use.

Q. Not for Springfield at all?

A. For general use.

Q. So you were telling those people out there the difficulties you would have in getting your pipe?

A. In supplying the pipe.

[fol. 170] Q. In getting pipe for the general conduct of your business; is that right?

A. Yes, sir.

Q. What was your purpose in telling them of the difficulties you had in obtaining pipe for the general conduct of your business; was it to show them the difficulties that you would encounter in extending gas out into the Springfield section?

A. To show them what difficulties we would encounter if we were contemplating going into Springfield.

Q. But then you did believe that Springfield was a section that was entitled to gas, if not on account of the cost of installing it there?

A. No.

Q. You did not believe that?

A. No.

Q. What was the purpose of taking up the subject of the difficulty of delivering the pipe for the installation of gas, if that were not the case?

A. I think it is quite necessary to make an explanation, that Mr. White was asked about, and that was a part of Mr. White's explanation.

Q. That was a part of his explanation?

A. Yes, sir.

Q. Did he state, however, that some of the pipe had been received and delivered to Jamaica?

A. Yes, sir; that is true.

Q. For the Springfield extension?

A. No, not for the Springfield extension.

By Deputy Commissioner Glennon:

Q. What did he say the pipe had been delivered there for?

A. Some of the pipe had been delivered—that is our general storage yard for the 4th Ward and the pipe is there for making extensions, and general purposes.

Q. How long has it been used as a storage yard?

A. We have had that yard, I think since about 1915; I am not [fol. 171] sure. We had another yard in Jamaica at Baker Avenue.

Q. How much of the pipe have you used from that yard since this meeting to which you referred, for extensions, or otherwise, approximately?

A. I dare say about half of it has been used.

Q. In what sections?

A. Throughout the 4th Ward. A lot of that pipe was used by the Government for contracts during the war.

Q. That is to say, the Government took it over?

A. In the construction of plants, iron works, etc. In the construction of works for the Government lots of pipe was used.

By Mr. Hazleton:

Q. You sold it to the Government.

A. That is something I will not answer; I cannot answer that question. I cannot answer how the charges were made.

By Deputy Commissioner Glennon:

Q. All you know is that it was for governmental purposes, and that a part of the pipe was needed in the mains installed since this meeting to which you refer?

A. There were new mains installed in the 4th Ward.

Q. How much did that amount to, about how much?

A. That would be difficult to state.

Q. Could you say a block, or two blocks, or more?

A. That would be difficult to state. There is an extension here and there for houses.

By Mr. Hazleton:

Q. There was no general extension?

A. No big extension, only absolutely necessary extensions.

[fol. 172] By Deputy Commissioner Glennon:

Q. Practically the only pipe that was used to any great extent was used for Governmental purposes; is that correct?

A. That is right.

By Mr. Hazleton:

Q. Did Mr. White say in substance that it would be necessary to have 75 tons of this pipe to make this extension out there?

A. No; 75 tons would hardly do.

Q. Was there anything said about 75 tons?

A. Why, 75 tons was mentioned in speaking about lead.

Q. Then he did speak about lead?

A. Yes.

Q. The lead related to what?

A. The difficulty we had in getting lead.

Q. Not as to the Springfield extension?

A. We were told that this amount would be necessary to run down there, and how much material would be necessary.

Q. It was mentioned that you would need 75 tons of lead to make the Springfield extension?

A. I do not recall whether anything was said about 75 tons of lead being necessary. We did mention the cost of lead and the difficulties in getting it.

Q. You told me that the words 75 tons was used, but you were speaking of lead?

A. I think that is true.

Q. Of course you were there, and you recall everything that was said. I only want to get you to give me your truthful recollection. So you say the 75 tons was mentioned at any time, in speaking in reference to the proposed Springfield extension?

[fol. 173] A. Confining the extension only to Springfield, at that time 75 tons of lead would have been necessary.

Q. So that was mentioned at that conversation?

A. That is no doubt what you refer to.

Q. Was it referred to at that conversation?

Deputy Commissioner Glennon: If you remember, all right.
The Witness: I do not recall it.

By Deputy Commissioner Glennon:

Q. How much pipe do you think would be required to get to Springfield at the present time with the nearest main?

A. To the head of the Springfield line is 12,975—

Mr. Dykman: Mr. Commissioner, Mr. White will go on the stand and he can give us full information in regard to that. This witness, I do not think has considered how much is necessary. I do not think it is a proper question to ask him.

Deputy Commissioner Glennon: I thought we might possibly clear up the situation.

Mr. Dykman: We will be able to get that from Mr. White.

Deputy Commissioner Glennon: Is there anything further?

Mr. Hazleton: Yes, your Honor, I might say that my cross-examination will only relate to that conversation.

By Mr. Hazleton:

Q. The matter of yarn was mentioned there, was it not?

A. Yes, sir.

[fol. 174] Q. The question of obtaining yarn?

A. Yes, sir.

Q. And Mr. White said that they had considerable difficulty in picking it up in small quantities at that time?

A. Why, yarn is something—

Q. Did he not mention that?

A. I do not recall.

Q. What do you recall about yarn?

A. At that time—yarn, we might have difficulty in getting it, but—

By Deputy Commissioner Glennon:

Q. Do you recall that something was said about yarn?

A. Yes, it was mentioned.

Q. Do you know in what way it was used?

A. When I refer back to the period, then I may say that Mr. White may have expressed the thought that that yarn could not be obtained in large quantities, but we could obtain small quantities of yarn where we needed them. That may have been his statement.

By Mr. Hazleton:

Q. Did he state that they are constantly after these concerns from whom they buy this metal, to hurry deliveries, and that as soon as sufficient pipe is received to bring the main line down Merrick Road to Springfield Avenue, they will begin work and complete it as soon as possible: was any thing like that said?

A. No, that would be wholly in contradiction.

Q. Nothing like that was said?

A. No.

Q. You distinctly recall that that was not said?

A. I recall it was not said.

Q. Your mind is absolutely certain and positive about that, is it?

A. I do not recall that.

[fol. 175] Q. Is your recollection better on this point than it was upon the subject of yarn, and the subject of lead?

A. There was no definite statement made of any extensions.

Q. I am asking you whether your recollection is better on this point?

A. To satisfy you, I will say yes.

Q. Not to satisfy me. I do not want you to commit perjury.

Mr. Dykman: I object to that.

Deputy Commissioner Glennon: You are not before a jury now, Mr. Hazleton.

Mr. Hazleton: I do not want him to satisfy me. I want the facts.

By Mr. Hazleton:

Q. Is your recollection better on this subject, or upon this point, that there was nothing said as to the introduction of gas down along the Merrick Road into Springfield; is your recollection the same on that point as it was when you testified to the amount of lead and the amount of yarn?

A. There was no statement made in regard to any definite time of going down. I will say my recollection is clear as to what was said in regard to the extension of mains.

Q. Is your recollection clear as to any other conversation?

A. Well, little things like yarn, we do not pay particular attention to.

Q. Like lead, 75 tons of lead; what about that?

A. We could always manage to get that some time or other.

Q. You do not pay any particular attention to that?

A. It is not of great importance.

Q. Why did you pay particular attention to the fact that there [fol. 176] was nothing said about extending the pipes of the gas mains along the Merrick Road into Springfield?

A. When you make that statement, you are getting into our layout, where it will be necessary for us to go down, and it has been said, should the company ever go down that way, the run would be down through the Merrick Road, and you people have taken that as a statement that we are going down the Merrick Road.

Q. Did Mr. White say at that conversation that "the President of the Brooklyn Union Gas Company called him into his office a short time ago and gave him an order to make this extension as soon as the material had been received"?

A. No.

Q. Nothing like that was said, Mr. Waldron?

A. No, sir.

By Deputy Commissioner Glennon:

Q. Do not recall that?

A. That was not said.

Q. Mr. White might take the stand; you do not recall that?

A. No.

By Mr. Hazleton:

Q. Did he state "under present conditions it would take about 60 days to install gas"?

A. Any such statement would be ridiculous.

Q. Did he say it?

A. No.

Q. You know Mr. Izor, do you not?

A. I do.

Q. Have you spoken to him since this proceeding has been instituted?

A. Since this proceeding started?

Q. Yes.

A. Yes, I have seen him.

Q. Have you visited him in Springfield?

A. No.

Q. Where did you meet him?

A. In New York.

Q. By appointment?

A. I stopped into his office one day.

[fol. 177] Q. When was that that you stopped into his office?

A. The last hearing, a week ago to-day.

Q. Was it after the hearing, or before?

A. Before.

Q. Have you seen him since?

A. No.

Q. Was anybody with you when you stopped to see him?

A. I was alone.

Q. Of course, you did not know what report Mr. Izor made back to the Springfield Citizens Association, in connection with his conversation with Mr. White at Mr. Izor's house on May 2nd?

A. Of course not.

Deputy Commissioner Glennon: Is Mr. Izor to be a witness here?

Mr. Hazleton: He is here this morning, but I understand he has been subpoenaed.

Mr. Dykman: He has been subpoenaed by me, or, rather, by the Secretary of the Commission.

By Deputy Commissioner Glennon:

Q. Did you talk with Mr. Izor the last time in reference to this proceeding?

A. Why, yes; we spoke in general on the case coming up.

Q. Did you serve him with a subpoena at that time?

A. No, I had nothing to do with that.

Q. How did you just happen to drop into his office?

A. No, I stepped in to see him bearing on this case.

Q. Did you ask him if he was willing to testify?

A. No.

Q. What was the bearing on this case that brought you to his office?

A. We went to lunch together.

[fol. 178] Mr. Dykman: I was the one that took that up, and if the Commissioner is interested in the details of my preparation of this case, I will be glad to tell him.

Deputy Commissioner Glennon: The object was to ascertain what Mr. Izor is going to testify to. I have heard his name mentioned here in connection with Mr. White visiting him, and then he being the member of some committee; it is testified that the leading conversations were not correct or true.

Mr. Dykman: I have met Mr. Izor once. Mr. Izor lunched with me the day of the last hearing. He was not then under subpoena, and I told him I did not think the Committee would finish, and there was no occasion to come here on that day. Since that time he has been subpoenaed by my office.

Deputy Commissioner Glennon: For the purpose of testifying?

Mr. Dykman: If Mr. Izor goes on the stand, I shall ask him to tell the Commissioner what happened at these various meetings at which he was present, because I have some indication that the Commissioner considers these conversations, which to my mind are utterly immaterial, of some value.

Mr. Deegan: If they were true, they would show the recognition of the question of the necessity of extension by the company away back in 1916. They have that bearing, at least.

Mr. Dykman: That is the bearing.

[fol. 179] Deputy Commissioner Glennon: They are in evidence. Is there anything further?

Mr. Hazleton: That is all for this witness.

By Mr. Dykman:

Q. Mr. Waldron, this pipe that has been talked about at Jamaica, whom does it belong to?

A. The Brooklyn Union Gas Company.

Q. Do you know what companies it has been used for, or sold to?

A. Companies operating in the 4th Ward.

Q. What are those companies?

A. The Woodhaven Gas Light Company, the Richmond Hill and Queens County, and the Jamaica Gas Light Company.

By Mr. Deegan:

Q. How do you know this pipe is owned by the Brooklyn Union Gas Company?

A. All the pipe is obtained by the Brooklyn Union Gas Company.

Q. How do you know that?

A. I know that the other companies do not purchase any pipe.

Q. What does the Brooklyn Union Gas Company do with regard to the subsidiary companies as to supplies?

A. Supplies are charged for to the companies; the different companies are charged with the amount used.

Q. Does the Brooklyn Union Gas Company purchase all the materials used by the subsidiary companies?

A. Every bit.

Q. And then charges each subsidiary company with the amount it uses?

A. Yes, sir.

Q. Have you seen the bills for the pipe out in the Jamaica lots?

A. No, I have not seen the bills.

[fol. 180] Q. But you can swear it is not the property of the Woodhaven Gas Light Company?

A. It is not.

Q. You are an employee of the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Is any part of your salary paid by the Woodhaven Gas Light Company?

A. The Brooklyn Union Gas Light Company.

Q. You are connected with the Woodhaven?

A. I am, as Assistant Superintendent of Street Department.

Q. Of the Woodhaven Gas; the same title as the Brooklyn Union Gas Company?

A. Yes.

Q. And the other subsidiary companies, the Richmond Hill and Queens?

A. Yes.

Deputy Commissioner Glennon: Is there anything further? It is 1:00 o'clock. Do you wish to go ahead this afternoon?

Mr. Hazleton: I am ready to go ahead this afternoon.

Mr. Dykman: I am ready to go ahead, but there is a proceeding of the Consolidated Gas Company before a Special Master which I am very anxious to attend. It is a matter of considerable importance to us.

Deputy Commissioner Glennon: What day would be convenient for you to continue?

(Discussion in regard to adjournment off the record.)

Mr. Dykman: Mr. Izor is here, and we might put him on the stand so he will be able to get away.

Deputy Commissioner Glennon: Do you want to put Mr. Izor on the stand now, Mr. Dykman?

Mr. Dykman: Yes, sir.

[fol. 181] WILL C. IZOR, called as a witness, being first duly sworn, testified as follows:

Direct-examination by Mr. Dykman:

Q. Where do you live, Mr. Izor?

A. Laurelton, Long Island.

Q. What is your business, Mr. Izor?

A. Vice President and Advertising Manager of the Needle Craft Publishing Company.

Q. How long have you lived in the locality of Laurelton?

A. About ten years.

Q. With what organizations have you been connected, and what offices have you held?

A. I have been connected with almost everything going on down there.

Q. Let us confine ourselves to gas.

A. I was, I am sorry to say, the Chairman of the Gas Committee of Springfield.

Q. When and for how long?

A. I do not know; I guess the Committee existed around about in the year 1916, and I resigned. I guess some time in April, or the latter part of March.

Q. What year?

A. This year.

Q. So you were Chairman for about three years, from 1916?

A. I imagine about that time; I have forgotten these dates.

Q. Who were your associates, Mr. Izor?

A. Mr. Holmes was Secretary of the Committee; Mr. Schaberhorn of Springfield; Mr. Berthold of Laurelton and Mr. W. M. Decker, who is now deceased, of Springfield. Mr. Nostrand attended some of the meetings, being President of the Association, and a member pro tem.

Q. There has been testimony here, Mr. Izor, on the part of Mr. Schaberhorn, and also on the part of Dr. Berthold, in regard to an [fol. 182] interview with Mr. White at the office of the gas company in Brooklyn, at which you were present, of which they speak as the first interview. Can you fix the date?

A. I looked up the correspondence; I think it was October, 1916.

Q. Do you recall any earlier interview in May of that year?

A. None that I had.

Q. Will you tell the Commission, in your own words, what took place at that meeting?

A. We wrote the gas company and got an appointment. I got the Committee; we went down, and before going we had a meeting, and we decided on a full outline, a little plan in typewriting, telling the gas company what we desired in our section. We were received by them, and we presented our story.

Q. Who did the presentation, if you recall; did you, as Chairman?

A. As I remember it, I read it. Yes, I am sure. There was quite a little discussion there. We could not get them to say any particular time when they would do it. They stated that they had been looking over this section and knew the section was growing; they were going to get down there just as soon as conditions were possible to come down. So we went away with that assurance that there might be something doing. That is about all that took place at that meeting, as I remember it.

Q. Was any time specified when any extension would be made?

A. We never could pin them down to any time.

Q. Was any other promise made?

A. No promise as to any definite time.

Q. Do you recall whether at this interview any mention was made of a rate case?

A. I do, sir.

Q. What was said about a rate case?

[fol. 183] A. They said every year someone would present a case of some kind, or law of some kind—

Q. I do not mean the Legislature, Mr. Izor. I do not mean a bill in the Legislature. I mean a rate case in the Public Service Commission, an action, a proceeding to reduce the rate?

A. Yes, sir.

Q. Was anything said?

A. Yes, and Mr. Berthold of my Committee and Mr. Schaberhorn was very anxious to be understood in a case of that kind that if anything could be done to defeat it, it would be done, because we were all willing to pay more for gas.

Q. Was anything said as to the case then pending?

A. In the Public Service Commission?

Q. Yes.

A. I do not remember. Maybe the Douglaston case was mentioned.

Q. We have not any connection with that, and that was not a rate case?

A. You mean the 95 cent case?

Q. Yes.

A. Yes, I remember that very well, that we had to deposit five cents in equity until this decision was rendered, as I remember it, but you were only willing to charge one dollar and get five cents back.

Q. Was anything said as to the relation of the decision upon an extension?

A. It was very plainly stated in the event this decision was sustained it would be very likely some time before they would have the money to go down there.

Q. When did you have, or did you have, any such other meeting?

A. I was in touch with Mr. White on two or three occasions, sir, following up our meeting.

Q. You mean personally, without the Committee?

A. Without the Committee.

[fol. 184] Q. Suppose you tell us what the general run of intercourse between you and him was after that?

A. Simply a matter of calling up Mr. White. I would say, "Mr. White, you are a busy man, and I am a busy man, let us go to lunch together today and see how it is going on." We did that twice, I think, and finally at the last interview, I said, "Mr. White, our people in Springfield are wanting a report, and they want to know what is doing, and what the chances are of getting gas," and he said, "I will be very glad to go and explain the whole situation to your

Committee." I made an appointment for him to come to my home. I think that was in March, the next year.

Q. So we can save as much time as possible, will you tell the Commissioner who was there, and all the details, what took place, and so on?

A. Mr. Waldron was there, and Mr. White, and Mr. Berthold, and Mr. Schabehorn, and Mr. Nostrand, Mr. Holmes; Mr. Decker did not appear, because he was not very well.

Q. What took place?

A. We got down to talking, and then Mr. White explained how things were.

Q. What did he say?

A. I cannot remember exactly the words.

By Deputy Commissioner Glennon:

Q. Just generally?

A. He said that the labor situation was as it was, and that prices were up as they were.

Q. When was this, at the public meeting?

A. At my home; that is, this Committee met that has been referred to on several occasions, and there was not any assurance; we asked him, "How long will it take you to come down, if you decide to come down," and he said, "The extension we were figuring on [fol. 185] would take sixty days, and possibly a little longer." Of course, we went into details of the amount of pipe, how they would come, etc., etc. But we never were able to pin him down to a permanent time. Mr. Berthold and Mr. Schabehorn were always scrapping at all these meetings. We tried to get an absolute decision as to the time, but we were not able to pin him down.

Q. When you say scrapping, do you mean between themselves, or with Mr. White?

A. No, sociably.

Q. Was anything said about any pipe in Jamaica being used to carry the mains to Springfield?

A. My impression was that pipes had been ordered for the extension. I never heard there was over two carloads of pipe.

Q. Who gave you the impression that the pipe had been ordered for these mains?

A. I got the impression from Mr. White.

Q. Where did he say the pipes were?

A. Some of them were in Jamaica; the rest had been ordered.

Deputy Commissioner Glennon: Is there anything further?

Mr. Dykman: Yes.

By Mr. Dykman:

Q. There was another occasion when Mr. White came to a meeting and made his speech. Were you present at Good Templars Hall in March 1919?

A. I was.

Q. What was said there?

A. Mr. White brought down his map, and figures, all of which I had seen, and he explained to the audience, as well as possible, ex-[fol. 186] actly what the costs were, when we first began figuring for the different work, and he then went into details very thoroughly, as to the sections, and he gave the cost of pipes to make the extensions at the present time, and a lot of people got up and asked him a lot of questions, and how soon it would be done, including Mr. Schabehorn, Dr. Berthold, and others, also Dr. Winslow, and he answered all of them "as quickly as possible." And I thought he made an explanation, and that is why I brought him down there, for that purpose.

Q. How did this public speech about the possibility of the extension differ from the public conversations?

A. None whatever. We were trying to pin on him, when he came down, some definite time.

By Deputy Commissioner Glennon:

Q. Did he say after the war was over?

A. He said one time, "after the war is over and conditions are settled."

Q. Did he say something about licking the Kaiser?

A. That was afterwards. He was asked by someone—I do not remember who it was, I was in the front of the Hall; I think it was Mr. Berthold, who was talking about his promise, and he said, "Did you not tell us that you were coming down here," and Mr. White said, "We did not know that we had to lick the Kaiser."

Q. Are you in favor of the installation?

A. I certainly am. I would not have been the Chairman of that Committee if I was not.

By Mr. Dykman:

Q. Do you recall a question being asked of Mr. White in regard [fol. 187] to what would happen if the Committee brought its case before this Commission?

A. I remember that very well, indeed. Somebody said——

Q. What was said?

A. Somebody said, "What if we take this to the Public Service Commission?" He said, "Gentlemen, that is your privilege, but remember what the Douglaston situation is."

Q. "Remember what the Douglaston situation is?"

A. "Remember what the Douglaston situation is."

Q. Instead, Mr. Izor, of taking up further time by calling your attention to particular testimony which has been given, I want to ask you one general question: Was any promise, at any time, made by Mr. White, or by anybody else, representing the gas company, to you personally, or to you as Chairman of this Committee, that extensions would be made to the locality which you represent?

A. Not at any definite time.

Q. Not at any definite time. That is, it was never stated to you

"We will put it in next week, or next month," or anything like that?

A. We never could get a definite answer from him as to the time; "possibly next year, possibly so and so, as soon as conditions are such that it can be done."

Q. And I also understood you to say that Mr. White's public speech did not differ from the private conversations, but was a general repetition in public of what he said in private?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Mr. Dykman: That is all.

Deputy Commissioner Glennon: Any cross-examination?

Cross-examination by Mr. Hazleton:

Q. Mr. Izor were you appointed Chairman of that Gas Committee [fol. 188] tee, or were you just a member of it?

A. Well, I imagine I was the Chairman. I think the first name on a committee is always the Chairman.

Q. Mr. Decker was the first name, was it not?

A. I do not know.

Q. Anyway, you assumed the duties of the Chairman?

A. Yes, sir.

Q. At a meeting on December 11, 1916, Mr. Izor, did you report calling upon the gas company and learning that the company had brought their pipes and would lay the pipes in the early Spring?

A. I do not know whether I reported that or not. I did.

Q. The report is in the minutes, is it not?

Mr. Dykman: No, there is an alleged report. By minutes, what do you mean? It is not in the record in this case.

Mr. Hazleton: No.

The Witnesses: You mean the Springfield minutes?

Mr. Hazleton: Yes.

By Mr. Hazleton:

Q. Mr. Izor, in April, 1917, did you report having another conversation with the gas company, and reporting that the gas company had ordered the pipes, but cannot say when they will get them?

A. If I reported that, you have the report.

Q. On September 10, 1917, did you, Mr. Izor, report "Pipe question O. K., but not able to get lead at the present time?"

A. Possibly I did.

Q. On November 12, 1917, did you report progress?

A. Very likely.

Q. After you had made that report—

[fol. 189] By Deputy Commissioner Glennon:

Q. What did you mean by progress?

A. Of course, all committees report progress. That is about the only kind of a report you get down our way.

Q. Did you mean you were still working on it?

A. Yes, was still progressing, as well as possible, under certain conditions.

By Mr. Hazleton:

Q. After you had that meeting with Mr. White, at your home, did you make a report to the Committee?

A. Yes, sir.

Q. Of course, facts were fresh in your mind at that time when you reported to the Committee and your report was a truthful one to the best of your ability?

A. Yes, sir.

Q. I show you this report, a yellow piece of paper, and ask you if that is your report?

A. Right.

Mr. Hazleton: I offer in evidence that report.

Mr. Dykman: No objection.

Deputy Commissioner Glennon: The same will be received and spread upon the minutes.

The paper was received in evidence and marked Complainants' Exhibit No. 12 of this date, and is as follows:

"Report of the Gas Committee

Your Committee is glad to be able to report considerable progress during the past thirty days in reference to extension for gas to this community.

[fol. 190] We have a letter from the gas company which I will read.

This letter was given to me by Mr. John T. White, Supt. of Street Department of the Brooklyn Union Gas Co. in person. Mr. White explained to me the existing conditions and the cause of delay of this extension. He also at this conference promised to attend our next committee meeting which he did, held at my home Wednesday night, May 2nd.

Mr. White, accompanied by Mr. Waldron, another representative of the gas company, attended this meeting. Mr. White explained in detail that the pipe for this extension had been ordered last November. Owing to the shortage of freight cars and congestion of freight, the foundry has been unable to deliver this pipe. He states, however, that some of it has been received and delivered to Jamaica. They are expecting additional deliveries at any time.

He also stated that the lead necessary to make this extension has been ordered from Omaha, Nebr. He states that the concern from whom they must buy their lead, as it is a particular kind, will not accept orders for over fifty tons at a time and then will not specify any date of delivery. It is necessary to have 75 tons of this metal to make the extension to Springfield.

The matter of yarn they will be able to handle, picking it up in small quantities, even though it has tripled in price. He states they are constantly after these concerns from whom they buy this metal to hurry deliveries, and that as soon as sufficient pipe is [fol. 191] received to bring the main line down Merrick Road to Springfield Avenue, they will begin work and complete it as soon as possible.

He states he has about 1,000 laborers in his department, but at the present time over one-half of these men have been detailed on eight-hour shifts to guard the various gas plants and property of their company. For this reason he will be unable to complete the work as quickly as if he had his full force of men.

Mr. White states to us that the president of the Brooklyn Union Gas Company called him into his office a short while ago and gave him an order to make this extension as soon as material had been received. So you see Mr. White has the order from the company and will proceed as soon as he has anything to proceed with. He states under present conditions it would take about 60 days to install this service.

I am sure I have voiced the sentiments of the entire Committee by assuring the Association that Springfield is going to get gas just as soon as conditions, which we all know at the present time are out of the ordinary, adjust themselves."

By Mr. Hazleton:

Q. There is a letter mentioned in that report, Mr. Izor. I ask you, have you that letter, or if not, what did you do with it?

A. I think you would get that at the same place you got the report. I turned it in with the report.

[fol. 192] Q. Whom did you return the report in to?

A. I do not remember, I think Mr. Hartman was secretary.

Q. I have been informed that the report was turned in without the letter?

A. I say in that report I will read the letter. I read it.

Q. You read the letter?

A. I read the letter. I have not the letter. I turned it in with the report.

Q. Do you remember distinctly at all to anybody in person?

A. No, but I delivered the report to whomever was there, that would be the president, the night I read the report.

By Deputy Commissioner Glennon:

Q. What did the letter say?

A. I cannot remember to save my life what it said.

By Mr. Deegan:

Q. Do you remember whom it was signed by—Mr. White?

A. It was signed by the Brooklyn Union Gas Company, I am pretty sure, not an individual signature.

Q. It was dated prior to the time this report was made?

A. After, yes.

By Mr. Hazleton:

Q. Mr. Izor, Mr. Hartman was secretary of the Association?

A. I am not sure of that; I think he was.

Q. Of course, you delivered the report to him, did you not?

A. I do not think I delivered the report to him. I was making a report of the Committee, and I probably laid it down upon the President's table.

Q. If I informed you when this report was delivered, the letter [fol. 193] was read, and you kept the letter, would that refresh your recollection?

A. Not a particle. I do not know anything about it.

Q. You do not know anything about to whom you delivered it; it is possible you did not deliver it to the Association; it is possible you might have put it in your pocket?

A. It is possible. I do not remember. I tried to find that letter the other day at my home, but I could not. I do not remember anything about it.

Deputy Commissioner Glennon: Can you obtain another copy of the letter, under the circumstances, and offer it in evidence?

Mr. Deegan: Will Mr. Dykman agree to furnish a copy of the letter?

Mr. Dykman: I think I got it here.

Mr. Hazleton: I do not know what it is, but it is mentioned here in this report.

Mr. Dykman: I do not know that this is it. (Producing letter.)

Deputy Commissioner Glennon: Look it over and ask the witness if that is the letter.

By Mr. Hazleton:

Q. Is that the letter to which you referred?

A. I think it is. That is the only one they ever wrote me.

Mr. Hazleton: I am willing to have it, as that one, if it throws any light on the subject. I offer in evidence the letter that is now produced by Mr. Dykman.

Deputy Commissioner Glennon: It will be received and marked.

The paper was received in evidence and marked Complainants' Exhibit No. 13 of this date.

[fol. 194] Mr. Hazleton: I will read the same.

"April 23, 1917.

Mr. Will C. Izor, Chairman of the Springfield Citizens Association Gas Committee, No. 1 Madison Avenue, New York City.

DEAR SIR: In reply to your communication of the 18th instant, addressed to Mr. J. T. White, Superintendent of our Street Depart-

ment, in reference to the extension of mains into Springfield section, we have been unable up to the present time to make the extensions, owing to our inability to procure the necessary material, due to the present general war conditions.

Yours truly, (Sgd.) F. B. Jourdan, Secretary of the Woodhaven Gas Light Co."

Deputy Commissioner Glennon: When was that dated?

Mr. Hazleton: April 23, 1917. That completes my cross-examination of this witness.

By Mr. Dykman:

Q. This report of yourself, Mr. Izor, as read by counsel to the Committee, ends up this way: "I am sure I have voiced the sentiments of the entire Committee by assuring the Association that Springfield is going to get gas just as soon as conditions, which we all know at the present time are out of the ordinary, adjust themselves." Was that [fol. 195] last paragraph meant as a summary of what went before?

A. Yes, sir.

Deputy Commissioner Glennon: We will adjourn this case until Thursday morning of this week at 10:30.

Whereupon, at 1:25 o'clock P. M. on the 15th day of July, 1919, the hearing in the above-entitled matter was adjourned until July 17, 1919, at 10:30 o'clock A. M.

Last Exhibit No. 13.

[fol. 196] STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Hearing Order in Case No. 2376

Before Hon. Edward J. Glennon, Deputy Commissioner

New York City, July 17, 1919.

Met pursuant to adjournment at 10:30 o'clock A. M.

Appearances: E. M. Degan, Esq., Assistant Counsel for the Public Service Commission for the First District; Messrs. Cullen & Dykman, appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. Crummey, Esq., of Counsel); Edgar [fol. 197] F. Hazleton, Esq. (Post Office Building, Fulton Street,

Jamaica, N. Y.), appearing for the Citizens Central Gas Committee of the Fourth Ward of the Borough of Queens; Messrs. Aron & Wise, 50 Pine Street, New York City, appearing for Hathron Homes Corporation and the Land Credit Corporation (by M. J. H. O'Connell, Esq., of Counsel).

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains to Springfield, Laurelton and other localities.

Mr. Deegan: Ready for the Commission.

Mr. Hazleton: Ready.

Mr. Dykman: At the last session, if the Commission please, on page 149 of the minutes we were discussing the introduction of these cards in evidence. I have just now been handed a copy of the minutes—

Deputy Commissioner Glennon: What part of the minutes are you reading from; what page?

Mr. Dykman: The conversation in regard to the concession.

Deputy Commissioner Glennon: "What is the exact concession you make in reference to them?"

Mr. Dykman: You asked me, Mr. Commissioner, "If witnesses were called here that they would testify to that effect?"

Deputy Commissioner Glennon: Yes.

Mr. Dykman: And I said, yes, and then you said, "That covers the situation," and then I said, "I will also concede if they came here they would repeat the words written on the cards," and then [fol. 198] a little further on I said, "But, of course, subject to all that, I make the objection which I made at the beginning."

I spoke those words inadvertently. It has been my intention all along, and I think your Honor appreciates it, and that counsel to the Commission and Mr. Hazleton appreciate it, that I have meant to preserve my objection to the cards, upon the ground of hearsay and irrelevancy. I am very much afraid in the record my statement there that "I will also concede if they came here they would repeat the words written on the cards," is entirely inconsistent with the objection I made; I am afraid it may have been spoiled; it was made inadvertently, and under the authorities, as I read them, the Commission has full power to relieve me from that concession, inasmuch as it will leave the other parties exactly where they started.

Deputy Commissioner Glennon: If each one of the procurers of the cards came here and testified, you would object to his testimony *and* the ground that it was hearsay evidence? That is what you are trying to bring out, is it?

Mr. Dykman: I do not want to concede and spoil my objection, that if each one of these persons were to come here that they would so testify.

Deputy Commissioner Glennon: Do you mean to say each person who signed one of those cards; is that correct?

Mr. Dykman: Yes.

Deputy Commissioner Glennon: What you were willing to concede was that the men or women who would appear here as witnesses

would testify that they procured those cards to be signed by the persons whose names are on the cards?

Mr. Dykman: Exactly.

[fol. 199] Deputy Commissioner Glennon: That is the amount of your concession.

Mr. Dykman: Exactly.

Deputy Commissioner Glennon: You object, however, to the introduction of that testimony on the ground that it is incompetent, irrelevant and immaterial?

Mr. Dykman: Yes, sir.

Deputy Commissioner Glennon: That is perfectly proper, and I so understood it at the time.

Mr. Hazleton: So did I.

Mr. Deegan: Yes, that is right.

Mr. Dykman: You will recall that the whole thing arose in connection with the cards of the husband of one of the witnesses, which he had taken, and I said I was quite ready to concede if that gentleman came here he would so testify.

Deputy Commissioner Glennon: You will not be held down to the concession made by you.

Mr. Dykman: I want to preserve my objection. There is one other thing: I have been asked by Mr. O'Connell, who appeared at the last hearing, representing Aron & Wise, to announce to the Commission that they withdraw from the case, and he has sent me this letter, and he also asked me to do this over the telephone. I do not know, that the letter and enclosure are——

Mr. Deegan: The Secretary of the Commission has also received a similar letter from Messrs. Aron & Wise.

Mr. Dykman: It may be proper for Mr. O'Connell to state the reasons which he states here.

Deputy Commissioner Glennon: It is not necessary. As a matter of fact, he is not going to appear any further in this proceeding.

Mr. Dykman: Because the Laurelton Development has failed to [fol. 200] make good title to the land which they were developing. That is the statement.

Mr. Hazleton: Was the name of Aron & Wise presented to the Commission as attorneys for any party at any time?

Mr. Dykman: They were down at the first hearing, by mistake, in the minutes I received, as appearing for the Woodhaven Gas Light Company. At the second hearing that was corrected, showing them appearing for the Hathron Homes Corporation and the Land Credit Corporation, and at the last hearing they appeared here.

All the stenographic minutes show Aron & Wise appearing for the Hathron Homes Corporation and the Land Credit Corporation, with the exception of one copy sent to Messrs. Cullen & Dykman, on which their appearance was improperly filled in.

Mr. Dykman: I think the Commissioner will sympathize with me about the confusion in these cards. I am not seeking to take technical objections, but, in order to prepare our case, it is necessary for us to know who wants gas in that locality, and Mr. Hazleton

gave me a list, which is in evidence as Exhibit No. 8, which contains a great number of names, which I now understand he has withdrawn.

Mr. Hazleton: It contains maybe eight or ten, or a dozen, outside this section, but those cards which we have introduced in evidence here contain the names of those in the section in which we seek gas to be installed.

Mr. Dykman: Of course, Mr. Hazleton was going to give me a list of names—I realize the time has been short, only two days, but still I have not got it.

[fol. 201] Mr. Hazleton: I was going to take the cards away to make up that list, just after your Honor left the room, but Mr. Dykman stated he believed that they should be left here, and rightly so, probably, so I left them here, and I have not been able to prepare that list, but there are the cards and there are the names (indicating). We are perfectly willing to have every one of them investigated. We have withdrawn the cards that were outside of the district.

Mr. Dykman: Is this the final bunch that is here now, Mr. Hazleton?

Mr. Hazleton: We have some additional ones, ones which we are getting signed as the case goes along, and surely the gas company cannot object to that, as the case goes along, if some one gives in some additional cards, and if someone brings in some additional cards, properly signed, I think they should be brought to the attention of the Commission, because on Saturday when they have a little time they will go out and get some more cards signed. We have about 50, I guess, that we are going to introduce later. Perhaps we will do that, if the Commission will permit us to do so.

Deputy Commissioner Glennon: I understand the situation thoroughly, but there is one thing you should bear in mind, and that is that these cards should be in as soon as possible, so the case will not drag along indefinitely.

Mr. Hazleton: I understand that. If your Honor will permit us to put them in, all right, and if not, we will do without it.

Deputy Commissioner Glennon: Out of fairness to Mr. Dykman, all these should be submitted to him as soon as possible. Your men go out in that territory affected and find out the people who are willing to take gas in the event gas was installed—

[fol. 202] Mr. Hazleton: They are trying to get all the cards signed that they can.

Mr. Dykman: You see much more important, Mr. Commissioner, than the names is finding out where these people are, and what the locality is; there has been a great deal of confusion here about what locality is to be served—

Mr. Hazleton: Relative to High Avenue and Hick View, I have since found out there was a place of that name some ten years ago, but since then it has become obsolete, and is now known as a part of Jamaica Gardens.

Deputy Commissioner Glennon: That is true of all the outlying districts.

Mr. Dykman: I do not mean that. I mean this: One particular feature of the case is illustrated by what happened at the last hearing. We were presented with a list that was, I think, 42 people in Bay View Landing. Those people have been asked to express their willingness to take gas; it is certain that there will be protests if an extension is ordered anywhere in this section, these people not to be affected are going to want gas; they are going to think that they are parties to this proceeding, and they are going to justify that on the fact that their claim has been presented to you by Mr. Hazleton.

Mr. Hazleton: They have been withdrawn, and the Committee is so informed.

Mr. Dykman: I would like to set a day when all the cards will be in and I can go to work on them.

Deputy Commissioner Glennon: You can do that in my absence. You can simply get together and stipulate any day that suits your convenience.

Mr. Hazleton: I do not know the names on those cards. If he will [fol. 203] let me take the cards, I will have a list prepared and with the additional ones that are going to be introduced, I will deliver them to him in person, and then he will be able to check them off.

Deputy Commissioner Glennon: Either that, or you three gentlemen can meet in the council room of the Commission and go over the cards, and waste all the time you wish to on them.

Mr. Dykman: Then, before the next hearing you will give me a list, a final list of the cards?

Deputy Commissioner Glennon: Why not make an appointment right here and now for some day when you can go over this list, so we will know when to set the next hearing, say tomorrow afternoon, or Monday afternoon, you three gentlemen get together and decide exactly what you want.

Further discussion on this subject off the record.

Mr. Dykman: Mr. Holmes, will you take the stand?

JOHN M. HOLMES, Belmont Street, Laurelton, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Dykman:

Q. Mr. Holmes, what is your business?

A. I am an Accountant with the Queensboro Gas and Electric Company, Far Rockaway.

Q. Where is your office?

A. Located at 1530 Far Rockaway Boulevard.

Q. Can you talk a little louder, I do not hear you?

A. 1530 Far Rockaway Boulevard, Far Rockaway.

[fol. 204] Q. Where do you live?

A. In Belmont Street, Laurelton.

Q. How long have you lived there?

A. I have lived there slightly over three years.

Q. During that time, what local organizations have you been connected with, and what positions have you held in any of them?

A. The Springfield Civic Association. I am connected with them since 1916; somewhere in along there.

Q. What were you there in that Association?

A. One year, Vice-President, and then after that I was a member of the Gas Committee.

Q. How did you happen to become a member of the Gas Committee?

A. Among others I was asked to serve on that Committee, and one of the reasons was because I knew something about the gas situation.

Q. How long have you been in the gas business?

A. Since 1907.

Q. Have you been connected with either the Brooklyn Union or any of its so-called subsidiary companies?

A. No, sir.

Q. As a member of this Gas Committee, Mr. Holmes, did you go at any time to the office of the Brooklyn Union Gas Company and the Woodhaven Gas Company, to see Mr. White and other gentlemen?

A. I never went there except to see Mr. White. I did not go there with the Committee at all.

Q. You did not go with the Committee?

A. No, sir.

Q. Will you state generally to the Commissioner when you went there to see Mr. White on this business?

A. I do not know that I ever went directly to see Mr. White about this business, particularly. I stopped in occasionally as I went by, [fol. 205] but I never had any special appointment on this gas question at the gas office in that way.

Q. Were they social visits?

A. Social visits, yes, sir.

Q. How long have you known Mr. White?

A. Since 1907. I met him when I was with the Consolidated Gas.

Q. Were you present at the meeting which has been spoken of here at Mr. Izor's home, with Mr. White and the Committee?

A. I was.

Q. Will you tell the Commissioner, in your own way, using your own words, all you remember about that meeting, when it happened, and so forth?

A. If I remember rightly, I went down to Mr. Izor's house. At that meeting we met Mr. White and Mr. Waldron, and Mr. White and Mr. Waldron were to come there and address the meeting and tell us about the situation in reference to supplying gas to Springfield and Laurelton. We had the Gas Committee there, and as I remember it, one or two others not on the Committee, but who were invited to be present, and at that time the situation was gone over,

and while there was no definite promise made as to just when gas would be brought down, we understood the time would come when it would be brought down, and my understanding was that a portion of the pipe had been supplied, or purchased, that might be used for this extension, but not all, or anywheres near all at that time.

At that time the question of lead was spoken of as one of the reasons extensions could not be made at any time, and they said, and I believe Mr. White said, my recollection is he said about 75 tons of lead would be needed for that operation, or something about [fol. 206] that, and that yarn could be picked up in odd lots, but lead seemed to be the one great obstacle in going ahead, in doing any work at that particular time. He spoke about this country going into the war, and there was some talk of delay on that account. Men he had doing the work—

By Deputy Commissioner Glennon :

Q. Delay as to what: you mean installing the gas?

A. In doing what?

Q. In installing the gas in Springfield and that neighborhood?

A. Yes, sir, the entire place; and another thing, the force of men were utilized elsewhere at that time guarding plants, etc.

Q. Did he tell you that there was a shortage of labor at any time in the plants?

A. Yes, sir; he said that.

Q. Owing to war conditions?

A. Yes, sir. I understood when the conditions would be more favorable and labor and material could be reasonably expected we would get the gas in Springfield.

Q. When the war was over, or anything of that character mentioned?

A. Yes, when the war was over it would be taken up and when conditions were different we would get gas in Springfield. I have always thought so.

Q. That is what you were led to understand from the talk with Mr. White?

A. Yes, sir.

By Mr. Dykman :

Q. Was any time set when the extension would be made?

A. No particular time.

By Deputy Commissioner Glennon :

Q. Nothing other than you have already testified?

A. No.

[fol. 207] By Mr. Dykman :

Q. In other words, conditions would have to change before anything could be done, is that right?

A. That was my understanding; yes, sir.

Q. You spoke of delay, Mr. Holmes?

A. Mr. White talked about delay.

Q. Did you understand this delay was confined to Springfield, or did it extend to all localities?

A. To all operations.

Mr. Hazleton: I object to that as incompetent, irrelevant and immaterial, what he understood.

Deputy Commissioner Glennon: Objection overruled. It is not what he understood so much as what was meant at the time of the talk, which is perfectly proper.

The Witness: My understanding was that there was no extensions being made, except what was absolutely necessary.

Q. Were you present at the meeting in March, this year, which Mr. White addressed?

A. I was; yes, sir.

Q. Will you state what he said, generally, there?

A. We went over the situation as it was at that time; that is, telling us about the cost it will involve the company in making extensions to all districts thereabouts. I believe at that time he spoke about something like \$360,000 that the extensions would cost, and that on account of the high cost of pipes and material and labor nothing could be done then.

By Deputy Commissioner Glennon:

Q. Has there been any decrease in the cost of materials and labor since that time?

[fol. 208] A. I understand pipe is less than it was at that time, yes, sir. Labor has been rather on the upward tendency.

Q. Do you imagine it is going to continue so for some years to come?

A. Yes, sir, I imagine so.

Q. From the present outlook?

A. Yes, sir, the way we find it in our work.

By Mr. Dykman:

Q. How did the general tenor of his speech differ from what Mr. White had said on previous occasions?

A. I do not think it differed a great deal. Every time I can remember, there was always some proviso as to when this work would be done. I mean by that, there was labor conditions, material conditions, high costs or working conditions entering into it every time we spoke of these things. A question, I think—one of the conditions was the scattered population.

Q. What was said about the scattered population?

A. There are not very many thickly populated sections in the district, as far as I can see.

By Deputy Commissioner Glennon:

Q. What did he say, not as far as your observations are concerned?

By Mr. Dykman:

Q. Not your opinion; state what he said.

By Deputy Commissioner Glennon:

Q. If you remember that he did say anything on it.

A. I cannot say definitely what he did say.

Q. But you do remember that something was said about population?

A. Yes, sir, but I cannot remember what was said.

[fol. 209] By Mr. Dykman:

Q. You remember something was said?

A. Yes, it was only certain streets in thickly populated sections, and mostly the houses were scattered, and they would have to run a considerable distance to get two or three consumers.

By Deputy Commissioner Glennon:

Q. Do you mean to say that he expressed a willingness to install gas if the streets were thickly populated?

A. No, I mean to say that was a matter under discussion, and what they would have to make. No declaration of that kind was made. That was a point in the conversation.

Q. How did the point come up in regard to the thickly populated streets, that he expressed an opinion on that subject?

A. We were talking of it as a business proposition.

Q. Do you think it would be a good business to install gas in those streets where there were a considerable number of houses, and not in the streets where there were not so many?

A. No; if one sections is supplied, all the sections should be supplied.

Q. What thought makes his talk on the business proposition stand out in your mind; there must have been something said?

A. The point was, I believe, that in the more thickly populated sections it would be a better proposition, and that was the point brought up in our conversation.

Q. Is the section down there as thickly populated now as it was in 1916?

A. More so. There are some houses building in all sections.

Q. You have not lost any people?

A. No, I think there are more people now, considerably more [fol. 210] people, than in 1916. There are not any houses, scarcely any houses there for rent. I do not know of any. It is a good place to live, and I think the people are finding it out.

Q. Even without the gas?

A. Yes, sir.

By Mr. Dykman:

Q. This question as to the population and the sparseness of the population, I assume, arose in discussion of the cost of the extension?

A. Yes, sir; that was it.

Q. At this meeting in March, 1919, did you hear any person in the hall ask Mr. White about coming to this Commission with the case?

A. I think such a question was asked, yes, sir, but I do not know who asked it.

By Deputy Commissioner Glennon:

Q. What did Mr. White say?

A. As I remember it, he said, "Gentlemen, that is your privilege."

Q. That is all you recall?

A. That is all I recall.

Q. Did you hear him make any reference to the Douglaston case?

A. I did not hear anything of that kind. I was busy with some other people a part of the time, but all I heard was "Gentlemen, that is your privilege."

Q. Possibly he may have said it without your knowledge?

A. Possibly, but I was close up, and I did not hear that.

Mr. Dykman: In fact, I might remind the Commissioner that the Douglaston case was pretty well finished in March, 1919, as bearing on the probability——

[fol. 211] Deputy Commissioner Glennon: That is a matter that is open to discussion. I was merely trying to help this witness finish his testimony.

The Witness: In a conversation with one gentleman connected with the Committee I said to him——

By Deputy Commissioner Glennon:

Q. You said to whom?

A. One of the men connected with the Committee.

Q. Who was the man?

A. Mr. Schabehorn. I said, "You know how Douglaston made out," in a personal conversation with Mr. Schabehorn.

Q. You said that?

A. Yes, I said that myself.

Cross-examination by Mr. Hazleton:

Q. You heard Mr. Izor on the stand the other day, did you not?

A. Yes, sir.

Q. You heard the Douglaston case had been referred to by Mr. White?

A. I did.

Q. You resigned from the Springfield Citizens Association, or Civic Association, did you not?

A. I did not resign. I resigned from the Committee.

Q. From the Committee?

A. Yes, sir.

Q. You resigned from the Committee because you objected to this being brought before the Public Service Commission, did you not?

A. I resigned from the Committee because I felt they were not satisfied with the work I was doing.

Q. You were opposed to bringing this matter before the Public Service Commission, were you not?

A. Yes; I thought it could be worked out without that.

[fol. 212] Mr. Dykman: I have been told by several of the witnesses that Dr. Berthold, who is sitting in the front row, is commenting on the testimony and disturbing them, and I respectfully ask the Commissioner to ask Dr. Berthold to leave the witnesses alone.

Deputy Commissioner Glennon: I see Dr. Berthold sitting there, but he does not seem to be interfering with anybody. I noticed him smiling once in awhile, but I do not see him addressing the witnesses at all.

Mr. Dykman: You are not as near him as I am.

Deputy Commissioner Glennon: As a matter of fact, I might say to the audience, through you, Mr. Hazleton, as I suggested the other day, when the question of applause came up, I think it might just as well be done away with, and then we could proceed with this matter in an orderly way and dispose of it at the earliest possible opportunity. I think we can make better progress if we will pay strict attention to our business, as far as the people making remarks and smiling is concerned. If they have anything in mind, they will just please keep quiet.

By Mr. Hazleton:

Q. You heard Mr. Izor when he said that he made this report which has been introduced as Committee's Exhibit No. 12 and what happened at that meeting?

A. I did.

Q. And when he said it was true?

A. Yes, sir.

[fol. 213] Q. You were present at that meeting, were you not?

A. I was.

Q. And you heard it, and you heard me read from that report as follows: "Mr. White states to us that the President of the Brooklyn Union Gas Company called him into his office a short while ago and gave him an order to make this extension as soon as material had been received." You heard me read that?

A. Yes, I hear- that read.

Q. And you heard Mr. Izor say that it was so, that it was a truthful report?

A. Yes, sir.

Q. Did you hear anything like that said?

A. I did not.

Q. Nothing like that?

A. No.

Q. You know Mr. Izor was called as a witness by Mr. Dykman?

A. I know that.

Q. You would not say that was not said there?

A. I would not say it was not.

Q. Did you hear this read: "So you see Mr. White had the order from the company and will proceed as soon as he has anything to proceed with. He states under present conditions it would take about 60 days to install this service." You did not hear anything like that, did you?

A. I have no recollection of that.

Q. But you would not say it was not said by Mr. White?

A. I would not say because I have not any knowledge.

By Deputy Commissioner Glennon:

Q. Was there any discussion about the time when he did say they would install the service?

A. There was, but I was going — another matter in another part of the room, and I did not hear all that was said.

[fol. 214] Q. Do you desire to have gas installed?

A. I certainly do.

Deputy Commissioner Glennon: Is there anything further from this witness?

Mr. Dykman: That is all, Mr. Holmes. Thank you, Mr. White, will you take the stand?

JOHN T. WHITE, 1237 Union Street, Borough of Brooklyn, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Dykman:

Q. What is your occupation, and how long have you been at it?

A. I am Superintendent of the Street Department of the Brooklyn Union Gas Company, and its subsidiary companies, one of which is the Woodhaven Gas Light Company.

Q. How long have you been in the gas business, and what have you done at it?

A. 35 years.

Q. Doing what?

A. In a supervisory capacity, merely. I was in the Distribution Department of the Equitable Company, for 15 years; in the New Amsterdam Gas Company for 5 years; with the Consolidated Gas Company 5 years, and the Brooklyn Union Gas Company and its subsidiary companies for the last ten years.

Q. How long have you held your present position with these last mentioned companies?

A. 10 years.

Q. Mr. White, it has been testified that you have had various conferences with the Gas Committee representing the locality in question. Will you tell the commissioner, in your own way, of the [fol. 215] first meeting which has been testified to, the date, and who was there, and what happened?

A. Yes, sir. The first conference with the Springfield and Laurelton Committee, as they were so called at that time, occurred at 176 Remsen Street, Monday, October 9, 1916. Present for the company was Messrs. Staniford, Vice-President, Mr. F. B. Jordan, then Secretary, and F. R. Wogan, Assistant Secretary. For the Springfield Civic Association: Mr. W. C. Izor, William H. Nostrand, William Schabehorn, Dr. Victor Berthold, William H. Decker and William H. Mills. To be brief and arrive at the point, and the essential in the discussion at that meeting it was to the effect that the company—and the discussion was carried on by the officers of the company, and not by myself—

By Deputy Commissioner Glennon:

Q. Are you reading from stenographic notes?

A. No; just notes of dates and names. I am taking them from a memorandum.

By Mr. Deegan:

Q. Is this something you prepared yourself?

A. Yes, to refresh my memory as to the names and the dates.

Q. Was this memorandum prepared shortly after this conference to which you refer?

A. Yes, sir.

Deputy Commissioner Glennon: This memorandum contains the substance of what took place at that meeting and you want to refer to it to refresh your recollection on what you are testifying to?

A. Exactly.

[fol. 216] A. (Continuing:) The discussion was to the effect that the Woodhaven Company had, shortly prior to this meeting, been decided against in some rate case, and the rate had been reduced, and at that time this alone was preventing any construction of an extension in Springfield, or any other section that covered the great amount of territory that Springfield did. That, in short, was all that occurred at that meeting. The Committee, after possibly two hours conference, withdrew. Do you wish me to go on to the next conference?

Q. No, just a minute. You were here throughout this proceeding, Mr. White, and I assume you heard Mr. Schabehorn's testimony as to this meeting, which you have described?

A. Yes, sir.

Q. You heard him testify, "They told us that they had been long considering the advisability of running gas to Springfield; that they would give us the extension. They had gone to a number of houses, had figured out the cost, and were about ready to make the extension." Was such a statement made?

A. In part, but not wholly.

By Deputy Commissioner Glennon:

Q. What is your recollection of that?

A. It is true we did make a survey in 1915 for the purpose of determining the number of houses and commercial aspect of the territory, and such other data that we considered essential. They were told that. Insofar as a decision to make the extension or to the effect that a budget had been prepared, or the whole of the money set aside to finance this extension, I emphatically deny it.

Q. There was another meeting which has been testified to; when did that occur?

A. That occurred at the Chairman's house, Mr. Will C. Izor, on May 2, 1917.

[fol. 217] Q. Will you go ahead with that meeting as you did with the last?

A. There were present for the Springfield Civic Association Mr. Izor, Mr. Nostrand, Mr. Schabehorn, Dr. Berthold and J. M. Holmes. For the company, I was accompanied by my Assistant, Mr. Waldron. Shortly before my going down there, which had occurred through a telephone request of Mr. Izor, I had asked the officers of the company to give me a letter to show that the visit was semi-official, and the officers of the company had cognizance of my intended visit, and they had authorized the visit. This letter was written at my suggestion by Mr. F. B. Jordan, and it was for the purpose of explaining the delays encountered and the trouble encountered in securing material, not particularly for the Springfield extension, but for all material, and that letter may have been badly phrased at that time; I did not read it; I simply delivered it, and then I went on with my talk to the Committee.

By Deputy Commissioner Glennon:

Q. Have you got a copy of that letter?

A. That is already in evidence.

Mr. Dykman: That is already in evidence, and marked Exhibit 13, Company's Exhibit 13.

A. (Continuing:) I explained to the Committee that the Brooklyn Union had ordered quite a quantity of pipe in 1916, and was at great trouble in securing it and getting deliveries. I also pointed out that the United States having declared war in April, 1917, a month prior to this conference, blocking freight deliveries, the inability to get the materials and the Government's restrictions on the production of pipe, and other material—

Mr. Hazleton: If your Honor please, do you not think that Mr. White might be able to give his recollection of this conversation without reading a typewritten statement, or some written statement that he has got there in his book?

Deputy Commissioner Glennon: Is it necessary to refer to that in order to refresh your recollection?

The Witness: It is, because I handle an immense amount of

business, and supervise the activities of six companies, and this Springfield matter is a mere incident in the routine business of the companies. If I have not something to refresh my memory and start me off on the dates and names, the chances are I will omit some important detail which is absolutely necessary.

Deputy Commissioner Glennon: In other words, that is all you are using that record for, is it, to refresh your recollection in regard to dates and names, and consultations had, etc., to the best of your recollection?

The Witness: To the best of my recollection, yes.

A. (Continuing:) I also pointed out that the United States having declared war in April, a month prior to this conference, blocking freight deliveries, creating an inability to get materials, and the Government's restrictions on the production of pipe, that it was impossible at that time to state when anything could be done. Also that labor had been used for guarding works and plants, and in addition some were enlisting, and some were drafted; others had left for better positions, because there many attractive offers at that time that would induce mechanics of the nature that we have to better themselves, and that naturally, where men can get a great deal more, or double the money, a great many will take advantage of it.

That is as far as I can recall what transpired at that meeting.

By Mr. Dykman:

Q. Mr. Schabehorn has testified, Mr. White, in reference to that meeting, that "Mr. White said he was glad of the opportunity to come to Springfield because of the mission that he came on, and that the conditions were such that they had not been able to get time to carry out their promise or to start their work, but that they were going right ahead with the work." Is that true?

A. I emphatically deny that.

Mr. Hazleton: Mr. Commissioner, are you going in this proceeding to apply the rules of evidence, or adhere to the rules of evidence, that when an attorney or a party to an action calls witnesses, and thereby places the badge of credibility upon him, that he is prevented from impeaching that witness' testimony by another witness? I call your Honor's attention to that fact for this reason, that Mr. Izor has taken the stand as a witness of the Gas Company, and has made certain statements which he said are true, and which are contained in the report offered in evidence as Committee's Exhibit No. 12, and now at this time Mr. White, by his testimony, does emphatically deny certain testimony of Mr. Izor. I believe I am not incorrect in saying that in any court that would not be permitted; when a witness is called in a trial of a case and has given me certain testimony, unless I am surprised and it is proven he is a hostile witness, I am not able to impeach his testimony by another witness. What I want to know is whether or not your Honor will apply the same rules of evidence.

Deputy Commissioner Glennon: You may object, and I will overrule the objection.

Mr. Hazleton: I make no objection.

Deputy Commissioner Glennon: That is what Mr. Schabehorn testified took place at a certain time, and this witness has denied it.

Mr. Dykman: Yes, sir.

By Mr. Dykman:

Q. Mr. Schabehorn also testified, Mr. White, "We were given the assurance that the work was about ready to start. We were assured that within two or three months at the very latest, the work would be under way." Did you, or did you not say that?

A. I did not.

Q. Did you say to the members of the Committee "Gentlemen, I want to meet you; I will probably meet you in the years to come. You can depend that I would not tell you, make those promises to you, unless I knew that they would be absolutely fulfilled." Did you or did you not say that?

A. I did not.

[fol. 221] Q. Dr. Berthold has testified with regard to the first meeting, of which you have spoken, the first meeting at the company's office, "We were promised the installation of gas into Springfield by Mr. White." What have you to say as to that?

A. I might say in answer to that question that the conversation there that afternoon was conducted by the Secretary and the Vice-President and the Assistant Secretary. I do not remember at this time of describing the extension and the cost of the extension, because I did not put in more than ten words during the entire conversation during the time the people were there, inasmuch as the officers there were higher authority than I was, and I would have absolutely no reason whatever to say that I would make the extension for the reason that I had no authority to make such a statement.

Q. Did you say it?

A. I did not say it.

Q. Did anybody else say it?

A. Nobody else said it.

Q. Testifying further in answer to a question, "What did he say," evidently referring to you, Dr. Berthold testified, "He said they would introduce gas into Springfield." What have you to say in regard to that?

A. I deny it.

Q. Did anybody else say that?

A. Nobody else said it; no, sir.

Q. Dr. Berthold further testified, "He requested us as members of the Committee on Gas of Springfield not to have any intercourse or make any statements to any communicating sections, such as Rosedale, or St. Albans, and in fact we were required by one another not to speak about it." Was any such request made by you or anybody else?

A. I did have some conversation with regard to spreading what you might term propaganda, possibly, in order to develop the entire

[fol. 222] territory, and that if conditions would warrant this extension at some time in the future, it would be much easier to handle Springfield and Laurelton than to have the whole place coming down on us like an avalanche. And that is the true explanation of the remarks I made at that time, but when I did make those remarks there was no promise conveyed that they would receive attention; absolutely none.

Q. Then, further on, although you have already covered this thing, perhaps, Dr. Berthold quoted you as saying, "I will tell you something that I would not tell to any other committee, and I will tell you that we have already placed in our budget for this year the amount necessary for bringing gas to Springfield; we have already the amount of pipes in Springfield for the installation." Did you make any statement with regard to that?

Deputy Commissioner Glennon: Did he say in Springfield?

Mr. Dykman: That is what the minutes say.

Deputy Commissioner Glennon: As I understood him, he said Jamaica.

Mr. Dykman: Of course, the pipes are in Jamaica, but I am reading the question as it appears in the minutes at page 98.

Deputy Commissioner Glennon: I do not recall any witness testifying that there were any gas pipes in Springfield.

Mr. Hazleton: No, they are all in Jamaica.

Deputy Commissioner Glennon: That is probably a stenographic error, and should be changed to Jamaica.

Mr. Hazleton: Yes.

[fol. 223] Mr. Dykman: I think if anybody is to correct the minutes, it should be the one who gave the testimony.

Deputy Commissioner Glennon: Dr. Berthold, was that Springfield, or Jamaica?

Dr. Berthold: That was Jamaica.

By Mr. Dykman:

Q. Did you or did you not speak those words telling Dr. Berthold that you had already placed in your budget the amount for the extension?

A. I deny it.

Q. Did you say, "We have already the amount of pipes in Jamaica for the installation"?

A. I also deny that.

Q. Have you ever heard of a budget of the gas company?

A. I never used the term in my life. In addition to that, I have no authority to handle budgets. It is handled by the officers of the company.

Q. In answer to another question, Mr. White, the question being "Did he say when you could expect gas"? "A. Gas within sixty days; if the material was on hand we could have the installation." What have you to say as to that?

A. During the conversation that was agreed on at Mr. Izor's

house on May 2, 1917, one of the gentlemen present—I do not know who it was, I think possibly it was Mr. Nostrand—said, “Mr. White, in an extension of this kind, how long do you suppose it would take to make it”? I said, “I do not know. Under favorable weather conditions and labor conditions and the country being in a normal state, I think it could be done within sixty or ninety days,” but I said, “That is a mere presumption, and I would not like to be nailed [fol. 224] to that time.” As far as I can recall, that was my reply, but that is how the question started, and that was the answer I gave.

Q. You did not tell them “They may expect gas in sixty days from November”?

A. I did not.

Q. With regard to the meeting in March, 1919, Dr. Berthold has testified, “I charged Mr. White with bad faith to the Committee and the people of Springfield.” “What did he say”? He could not say anything.” Have you anything to say about that?

A. From recollection, I can say at the conclusion of my talk down there, to which I was invited by Mr. Izor, I asked the people present to submit any questions they wanted to, and I would answer them to the best of my ability. I was subjected to questioning for about an hour and a half. The members of the Committee, of course, I knew them, but the other people who asked me questions I did not know. Dr. Berthold, I think was the first one that got up and in his German accented words—

Deputy Commissioner Glennon: I do not see the necessity of characterizing his words. Strike that from the record. Just state what he said.

A. (Continuing:) He practically accused me of bad faith and I said I did not carry out my promise to the Committee and made other accusations, more or less, taking up considerable time, and after the gentleman had completed, I told him that I had carefully gone into the details of the whole situation that evening, and I had carefully and patiently shown them just what the causes for delay were, and the conditions that existed at that time, which prevented even [fol. 225] consideration of their extension, and I replied to him quite at length that way, and then I said, “The prime reason that is holding up all these things, that is embarrassing the public utility companies, and the essential fact that holds this whole thing in the condition that it is today, and which makes me come down here and tell you of our inability to do this, is caused by the fact that this country had to lick the Kaiser.” After that the gentleman said nothing and sat down, and shortly after the conclusion of the meeting Dr. Berthold came up to me and apologized.

Deputy Commissioner Glennon: What did he say?

The Witness: He said he was very sorry—this is from recollection; I am not using his exact words, but it was to the effect that he was sorry he had talked to me in the way he did, and that he hoped I would not take offense. That was about all.

By Mr. Dykman :

Q. Were you asked at that meeting in one of these questions about the proposition of the application to the Commission for an order to make the extension?

A. I was.

Q. What was your answer?

A. My answer was to the effect that this is your privilege, gentlemen.

Q. Very shortly, because it has been testified to very fully, and without contradiction; what was the nature of your speech on that occasion?

A. After I was introduced by Mr. Izor, Chairman of the Gas Committee, I acknowledged the introduction, and then I briefly described the methods of distribution——

[fol. 225a] By Deputy Commissioner Glennon :

Q. Pardon me. Did you write out your speech beforehand?

A. I did; yes, sir. That is to say, I made notes on the way down, and supplemented the notes, the piece of paper.

Q. That was your main address?

A. Yes, sir. I described the method of distribution, the difference between low pressure and the booster system; exhibited a map explaining the lay-out; compared per-war cost with 1919 costs; spoke about 1915 survey, which showed 669 buildings, by selecting thickly populated sections, and 289 equipped for gas, and only 534 expressed their intention to use gas. I concluded with the statement that at this time the extension could not be made, but hoped that conditions would change in the future so the Woodhaven could serve their communities.

By Mr. Dykman :

Q. In the course of that pre-war cost, or tabulation, did you mention what the cost would have been, what your estimate in 1915 had been?

A. I did, in round figures.

Q. What was that?

A. I could not recall now. I cannot recall now. I have not got the notes with me.

Q. There was some testimony by Mr. Holmes in which he mentioned a figure of \$360,000.

A. That was the 1915 estimate, from memory.

Q. I show you this map, Mr. White, Exhibit No. 7; you are familiar with how that map was made and marked by your assistant, Mr. Waldron, I assume?

A. Yes, sir.

Q. You have made a survey of that territory; in what way? Will you tell the Commissioner?

[fol. 225b] A. By going through the territory, the entire territory, the streets and the roads and the lanes and dotting down the houses in as near their location as possible show on a picture map

of this kind, and then measuring by actual tape measure a wheel with a rotameter, with a small runabout cart, or automobile, and got the exact number of lineal feet that the houses were located from the nearest source of supply and the necessary feet of pipe to run from the source of supply to the houses.

By Deputy Commissioner Glennon:

Q. How long did it take you to do that?

A. Over six weeks.

Q. Working every day?

A. Working every day when the weather would permit. There was some very rainy days.

By Mr. Dykman:

Q. Are you familiar with the order in this case, 2376, and the localities named in the order?

A. I have not seen the order.

Q. I show you a copy of the order.

Mr. Deegan: You mean the hearing order?

Mr. Dykman: Yes.

Q. I show you a copy of the hearing order (handing paper to witness.) There you will find the names of the various localities.

A. Yes, sir, I have them here.

Q. Are those localities represented on that map?

A. Yes, sir.

[fol. 226] Q. On your survey and your knowledge of present prices and the cost of suitable installation, have you made an estimate of the cost of an extension necessary to reasonably furnish gas to the localities under consideration in this hearing?

A. I have.

Mr. Deegan: I do not know as Mr. Dykman has shown Mr. White is qualified. I do not say that he is not, but I do not believe that has been brought out. You did show that he is connected with companies—

Deputy Commissioner Glennon: Can you qualify him as an expert in cost of installation?

Mr. Deegan: You did not show exactly what he had done in connection with the installation.

By Mr. Dykman:

Q. Suppose you tell the Commissioner what you have done in connection with the distribution system; your experience?

A. I have constructed lines for the Equitable Company between the years 1884 and 1899. I have approved and installed meters in Manhattan, particularly, the Waldorf-Astoria Hotel, Tiffany's factory down in Houston Street at that time, installed connections and meters and piping through the Metropolitan Opera House.

During my period of service with the Equitable Company, in the New Amsterdam Company, I was assistant to the Superintendent of Distribution and installed cost accounting methods in the Department of Distribution and had a general knowledge and charge of the installation of extensive mains and services and supervision of [fol. 227] meters. In the Consolidated Company from 1904 to 1909 I did considerable work on the Consolidated so-called 80 cent rate case, in addition to being an assistant to the General Superintendent of Main Service in the Street Department of that company, and had general supervision of the Accounting System of the Street Department, for both the general offices and branch offices, and during that time I introduced some systems in that company that are still in use today, and in the Brooklyn Union Gas Company, and subsidiary companies, for the last ten years, I have been employed as their Superintendent of Street Department, which covers the installation of mains, services and meters.

I have installed fully 40 per cent of the distribution system located in Queens, with about 20 per cent of the distribution system in Brooklyn. I have worked in connection with Humphreys & Miller, consulting engineers, in connection with the rate cases. I have placed valuations sustaining their valuation in testimony submitted to this Commission and Courts, and since my employment with the Brooklyn Union Company, I have been their valuation man on the distribution system, and also estimating work affecting the distribution system.

By Deputy Commissioner Glennon:

Q. Have you had charge of letting the contracts for these mains and services, etc.?

A. I have charge of it, if we let any, but we do not let; we do the work ourselves.

Q. In making those installations are the men under your charge?

A. Yes, sir.

[fol. 228] Q. How many men are under your supervision?

A. In busy times there are 1,000 men to 1,200 men. At the present time, about 750 to 800 men. It fluctuates.

Q. The cost of the work depends on the territory affected?

A. In a degree, yes, sir.

Q. For instance, if you had to do the work in a territory like the Bronx, where the formation of the soil is hard and rocky, as compared with the land in Brooklyn, the cost of the work would be greater?

A. Yes, sir; we call that clean fill.

By Mr. Deegan:

Q. Are you an engineer by profession.

A. I am what you might term a practical engineer. I have studied under Emil Enfer. He was a noted French engineer, and during the period of my service, a part of which time was spent in a manu-

facturing plant, I was known as his pupil and studied under him. I had no diploma. I am not a college graduate. What knowledge I have is practical, except the tuition I received during the five years under his supervision.

Deputy Commissioner Glennon: Is that satisfactory?

Mr. Deegan: Yes, sir.

Mr. Dykman: I suggest that the stenographer read the last question, if he can find it among that maze of stuff. I have it practically written out here myself and can read it.

By Mr. Dykman:

Q. On this survey, Mr. White, which you say you made, and [fol. 229] your knowledge of present prices and the cost of a suitable installation, have you made an estimate of the cost of an extension necessary to reasonably furnish gas to the localities under consideration in this hearing?

A. I have, sir.

Q. Will you state the total cost?

Mr. Deegan: "By the localities under consideration" do you mean all the localities mentioned in the hearing order?

Mr. Dykman: Yes; I do not know any other way to start.

Mr. Deegan: I understood from Mr. Hazleton that he was limiting it to certain other localities.

Mr. Dykman: The Commission has not changed its inquiry at all.

Mr. Deegan: I may say the reason all the localities were mentioned in the hearing order, in the first place, was due to the fact that the company itself submitted a letter with regard to this complaint, in which it included all those, and that is why they were all included in the hearing resolution.

By Mr. Dykman:

Q. Will you state the total cost?

A. \$693,931.34.

Q. Have you made a summary of those costs, as you found them, a recapitulation?

A. I did, sir.

Q. Have you got it with you?

A. I have one; Mr. Crummey has the other one.

Q. Is that it (handing paper to witness)?

A. That is it; yes, sir.

Q. You prepared that, did you?

A. Yes, sir; I did.

[fol. 230] Mr. Dykman: I offer it in evidence.

The paper was received in evidence and marked Company's Exhibit No. 14 of this date.

Deputy Commissioner Glennon: Does that affect all the territory indicated, or that is indicated, rather, in that Exhibit No. 11?

Mr. Dykman: Yes, sir. It goes along with that map.

Deputy Commissioner Glennon: It also covers the cost of installation to every house that appears in Exhibit No. 11?

Mr. Dykman: Yes, sir.

Deputy Commissioner Glennon: That cover the cost of installation of mains, meters and services, does it?

Mr. Dykman: Yes, sir.

By Mr. Dykman:

Q. Since the summary was made, has there been any reduction in the cost of any material considered in it?

A. Yes, sir.

Q. What reduction, in what material, and how would it affect this calculation?

A. This calculation is made or based on pipe quoted May 21, 1919, which called for four inch pipe at \$60 per ton; six inch, eight inch and twelve inch, at \$57 a ton. On a recent quotation under date of July 10, we find there has been a reduction in four inch pipe to \$54, and six inch, eight inch and twelve inch pipe to \$51 per ton. This will reduce my estimate of \$693,931.34 by \$40,632.42.

Q. And save with that correction, is this recapitulation to the best of your knowledge, correct, as of today?

A. It is, sir.

[fol. 231] Q. Mr. White, I see on this summary, Exhibit 14, that you find 1,391 houses. The Committee at various times has produced here 982 names, and subject to decrease and increase, I do not know what it is now, but what have you to say about that?

A. In order for me to intelligently and satisfactorily answer that question, I must admit that I am considerably in doubt as to the intention of counsel, as to the number of cards, but I will say—

Q. Let us make it, or rather take 982.

A. If we use 982 cards, as they were located on the map in the sections given, it will take more main supply than is shown in my estimate of costs, for the reason some of those cards go down in the southeast section of the territory, which I have not provided to supply at all.

Q. Mr. White, will you give the details of your estimate?

Deputy Commissioner Glennon: Does it appear on the exhibit offered in evidence?

Mr. Dykman: Yes, sir, but I think what Mr. White can say very briefly and shortly may be of some value to you. My only notion is to explain—

Deputy Commissioner Glennon: I suppose counsel is going to take up a lot of time in cross-examining into this. I do not think it is necessary.

Mr. Dykman: I would like, if I may, to ask the witness to give us that.

Q. Will you give us some detail of your estimate?

A. The estimate, briefly stated, provides for a transmission line of

12,973 feet of twelve inch pipe, which must first be run in order to start the work at all. This will cost \$46,742.36.

[fol. 232] The remainder of the mains, which are to cover the different communities mentioned in Exhibit 14, are for the purpose of supplying 1,391 houses. It calls for 281,248 lineal feet, a total cost of \$600,771.15.

The service pipes are provided for each one of the houses found in survey of the 1,391 houses, and their cost is \$25,568.69. The cost of the meters and connections to the meters for the same 1,391 houses amounts to \$20,849.14.

Therefore, the total of the mains, services and meters amounts to \$647,188.98. To this, as I have before stated, should be added the cost of the transmission line, bringing the total to \$693,931.34.

Q. Mr. White, what is the present mileage of the Woodhaven Company; if you know?

A. The present mileage of June 1, 1919, is 96.01.

Q. What is the present number of consumers, if you know?

A. The number of consumers, in a report rendered to his Commission under date of December 31, 1918, showed 14,264 active, but if the inactive meters are included, it would be 14,738.

Q. I believe you did testify already as to the mileage which would be required, as shown on your Exhibits 14; I do not remember?

A. I did. I might add that the total mileage for that extension would be 55.72.

Q. There has been considerable testimony here, Mr. White, about some pipe at Jamaica. Will you tell the Commissioner who owned it, when delivered, and all you know about it?

A. That pipe, Mr. Commissioner, was ordered October 27, 1916, by the Brooklyn Union Company. How I know it was ordered by the Brooklyn Union is the fact that I made out the requisition, signed [fol. 233] it, forwarded it to the Purchasing Agent for bids, and after the bids were received, it was approved by the President, and Chief Engineer of the company.

By Deputy Commissioner Glennon:

Q. When was that?

A. October 27, 1916; it was ordered at that time. Afterwards, in order to confirm my knowledge of the fact that it was ordered by the Brooklyn Union Company, I may add that on each delivery the bill was sent to me, and I approved the bill and forwarded the same to the Auditor for payment by the Brooklyn Union Company.

Q. How soon was that pipe delivered after it was ordered?

A. We ordered it on October 27, 1916, and it was not fully delivered until July 2, 1918.

Q. When was the first delivery made?

A. The first delivery was made some time in April, or May, 1917, two carloads. We succeeded in getting two carloads through. We were very barefoot for pipe and were straining heaven and earth to get some, and we finally got two carloads through.

Q. What was that pipe used for?

A. That pipe was used for minor extensions throughout the territory of the 4th Ward. When the different applications for extensions would come in to the company, we would go there, and if conditions justified the extension, we would make it.

Q. What was the size of the pipe?

A. It ranges from four to twelve inches; four, six, eight and twelve inches.

Q. How much twelve inch pipe have you there at the present time?

A. At the present time, 2,673 lengths.

[fol. 234] Q. How many feet in a length?

A. You multiply these figures by 12, and that gives you, each length slightly longer, about 31,000 feet.

Q. About 31,000 feet is there at the present time?

A. Yes, sir; that is right.

Q. How many of the eight inch and ten inch?

A. There are no ten inch.

Q. The eight inch?

A. Of the eight inch, there are 562 lengths.

Q. Six inch?

A. 438 lengths.

Q. How many of four inch?

A. 402 lengths.

Q. What is the fair estimate of the value of the pipe stored in Jamaica?

A. At the present time, I suppose you mean.

Q. Yes; that is, of the date you last took an inventory, July 1st?

A. I could not give you that figure without making it up. I do not know. I would not venture to say. Any figure on my part would be just a wild presumption. However, it could be obtained easily.

Q. What is the cost of twelve inch pipe?

A. We get that pipe by the ton. The last quotation is \$51 a ton.

Q. You have no knowledge of the cost by the foot?

A. You can figure it. You would have to reduce it to the pounds, and get the pounds per foot.

Q. What effect has weather on pipe; that is, leaving it out in the rain and snow and so on?

A. No direct effect, except rust occurs on the exterior of the pipe, which does not by any means impair its usefulness for many years. In fact, I have been in this business for 35 years, and I have never seen a piece of pipe which has been exposed to the weather, and also under the surface of the earth which had been in any way impaired [fol. 235] as to its usefulness for the purpose of conveying gas or any other fluid.

Q. What is the ordinary life of gas mains?

A. In view of the fact that I am a witness, and must testify to what I know, I must testify that I do not know, because it is indefinite.

Q. Depending on the soil and conditions in these particular territories?

A. Not in cast iron. There have been cases where cast iron pipe is known to have lasted 250 years, and these quotations from the

United States Foundry Catalogues and from other sources, lead me to believe, with my little knowledge during the limited time I have been in the business, that the best reply is that the life of cast iron pipe is indefinite. It is longer than anybody known of, any living person knows of.

By Mr. Dykman:

Q. I wanted to get from you, Mr. White, when this pipe had been delivered, if you can tell us when the deliveries were made, or if you cannot tell us approximately when they were made?

A. The first delivery on that order — made October 27, 1916, and the order was filled complete July 2, 1918. The deliveries were made in such dribs and drabs that I would need a couple of yards of paper to give the dates. I did not think to bring that.

Q. Will you tell them about the use actually made of that pipe; name the companies which have used it?

Deputy Commissioner Glennon: You mean the pipe which was originally ordered; you do not refer to the pipe which was in the yard on July 1st of this year, do you?

[fol. 236] Mr. Dykman: The pipe which has been stored at Jamaica since this order was put in. I want to know what use was made of it.

Deputy Commissioner Glennon: This witness has testified in answer to my question that on July 1st of this year there were certain lengths of pipe there.

By Deputy Commissioner Glennon:

Q. Was that a part of the original order?

A. About half, with the exception of the twelve.

Q. That is what remains?

A. That is what remains.

By Mr. Dykman:

Q. I would like to know what was done with the part that was used?

A. The part used, we made extensions for the Richmond Hill and Queens Gas Light Company in their territory; we used it in all portions of the Woodhaven Company, and also for the territory of the Jamaica Gas Light Company. It has been used exclusively for the extension of the 4th Ward companies.

Q. What sort of extensions?

A. To supply consumers in newly developed streets or places where buildings have been erected, which were not piped prior to erection by the other companies.

Q. Has it been used in any such extension as is under consideration in this hearing?

A. No, sir. That is what I call piece-meal construction, adding on to existing lines, probably 200 feet, or 300 feet, according to the number of houses and lengths necessary to reach them.

Q. Was it possible during the war to get pipe?

A. No, sir; it was impossible

[fol. 237] Q. I assume this pipe in Jamaica has been used more or less as a reserve for existing business?

A. It was the only pipe we had, and it was quite necessary to use it as a reserve. That is the only pipe we have to-day.

Q. Do you supply garages with gas?

A. My understanding of garages is that the use of gas in garages, particularly all public garages, is strictly and wholly prohibited, and for any private garages, in fact, I know it is prohibited in private garages.

Deputy Commission- Glennon: How long do you expect to take to cross-examine this witness?

Mr. Hazleton: I do not think it will take very long. Of course, you know, is difficult to tell. However, I am frank to say I think it will take me longer to cross-examine than it did on the direct.

Deputy Commissioner Glennon: Have you any further witnesses to call, Mr. Dykman?

Mr. Dykman: Yes, sir.

Deputy Commissioner Glennon: How many?

Mr. Dykman: I should say, at least, three before I get through.

Deputy Commissioner Glennon: What will be the nature of their testimony?

Mr. Dykman: The cost of extension and the present revenue of the company.

Deputy Commissioner Glennon: When would it be convenient for you gentlemen to have the next hearing?

[fol. 238] Discussion in regard to adjournment off the record.

Deputy Commissioner Glennon: We will adjourn this case until Tuesday morning at 10 o'clock.

Whereupon, at 12:30 o'clock P. M. on the 17th day of July, 1919, the hearing in the above entitled matter was adjourned until July 22, 1919, at 10:00 o'clock A. M.

Last Exhibit No. 14.

STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Hearing Order in Case No. 2376

Before Hon. Edward J. Glennon, Deputy Commissioner

New York City, July 22, 1919.

Met pursuant to adjournment at 10:00 o'clock A. M.

[fol. 239] Appearances: E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District; Messrs. Cullen & Dykman, Appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. Crummey, Esq., of Counsel); Edgar F. Hazleton, Esq., Post Office Building, Fulton Street, Jamaica, N. Y., Appearing for the Citizens Central Gas Committee of the Fourth Ward of the Borough of Queens.

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains to Springfield, Laurelton and other localities.

Proceed with the cross-examination of Mr. White.

JOHN T. WHITE, recalled as a witness, having been previously duly sworn, testified further as follows:

Cross-examination by Mr. Hazleton:

Q. Mr. White, you were present at the hearing when Mr. Izor was called as a witness by the gas company, and testified, were you not?

A. I was.

Q. And you had spoken and had dinner with Mr. White, a few [fol. 240] days before the first hearing in this proceeding, did you not?

A. I did. I would not call it a dinner; I would call it a lunch.

Q. You had something to eat with him?

A. Yes, I had lunch with him.

Q. And you met him how many times before this first meeting, during this month?

A. Many times; that is, at least two or three.

Q. Where was it the first time you met him?

A. During the present month, I think I went down to his house one night after the first hearing.

Q. You went down to his house one night right after the first hearing?

A. Yes, sir.

Q. Who accompanied you there?

A. I was alone.

Q. When was the last time before that that you saw him and had a talk with him?

A. The last time before that—I cannot really place it. I think it must have been a week after my so-called speech at the hall down in Springfield; at the Town Hall.

Q. You would call that a speech, would you not?

A. I would call it a talk; I would not call it a speech. I would call it a talk for educational purposes.

Q. Then, your purpose in going down there was to educate the people, particularly of Springfield, on this question of gas?

A. Yes, and discuss frankly with them the subject.

Q. After this meeting you had with Mr. Izor at his home, after the first hearing, in this matter, how many times did you meet him up to the present, outside of meeting him in this Commission's rooms?

A. I think just the time we had lunch together, the same day, I think he testified here, or the day before; I have forgotten.

Q. Of course, there was discussed at those meetings you had with [fol. 241] Mr. Izor what you had said to him on the previous occasions when he was acting upon the Committee for Gas; that is true, is it not?

A. No, sir; not exactly.

Q. What was the purpose of your visit to Mr. Izor?

A. To discuss generally the condition of affairs down there, and also it was partly social.

Q. Have you known him for a long time?

A. Since this action was started by the Springfield Civic Committee; I have known him since.

Q. What was the principal reason for your visit to his house, social or otherwise?

A. It was about half and half; fifty-fifty.

Q. Had you ever made a social visit to his home before that time?

A. Yes, sir.

Q. How many, on how many different occasions?

A. I cannot tell you exactly; several.

Q. How long after this first hearing was this half social and half business meeting had?

A. Two or three days.

Q. Did you not talk at all about what had been said between you at the meetings, where Mr. Izor represented the Gas Committee?

A. No. At that meeting——

Q. That is satisfactory. That is all I want. That is a satisfactory answer. You did not mention that at all?

A. No, sir.

Q. At any of the subsequent meetings, were any of the talks which you recall relative to this matter?

A. Except in a general way.

Q. What do you mean when you say "except in a general way?"

A. I wanted to assure myself that Mr. Izor clearly understood our position in the matter, and we had frankly stated to him, and he had thoroughly grasped the conditions, that prevailed, and that he thoroughly understood we had made no definite promise to go to [fol. 242] Springfield. I assured myself of that fact, and that was all there was to it.

Q. You wanted to assure yourself that both you and Mr. Izor absolutely agreed as to what had been said at those different conversations; is that it?

A. Not entirely.

Q. Did you find out that he did not differ from you in what had happened?

A. No, sir.

Q. Did you find out that he differed in all or anything relative to what you had said concerning the installing of gas in Springfield and the other sections?

A. No, sir.

Q. Then you did learn that you and he absolutely agreed on that?

A. On the matters that I had up with him, we agreed.

Q. On what you had said to him?

A. On what I discussed with him, at the time of the meetings, we agreed.

Q. You agreed on what you discussed with him?

A. Yes, we agreed.

Q. You recall when he testified here and was given a copy of the report he had made to the Springfield Civic Association of talks he had had with you, do you not?

A. What was that question?

Question repeated by the stenographer.

A. Yes, sir.

Q. And you recall when that report was read to him and he said it was true?

A. Yes, sir.

Q. Did his testimony here on the stand as the witness for the company differ in any respect from what he had told you at those meetings was his opinion or what his version was of what had been said between you gentlemen at those different meetings?

[fol. 243] A. Not in the essential points; there was no difference. And that was the only thing I discussed with him.

Q. When he said that that part of his report was true wherein he said "Mr. White explained in detail to the people that the pipe for this extension had been ordered last November," did he in any way discuss with you what you had been led to believe what his version had been of the talk between you?

A. I never took that part of the report up with him, and did not consider it important enough to take up with him.

Q. Did you ever say that to Mr. Izor?

A. No, sir.

Q. You never said that to him?

A. No, sir.

Q. Did you ever discuss the matter of pipe with him at any of the meetings?

A. Except as related here in the testimony; to that extent, yes.

Q. Did you make this statement to him: "Owing to the shortage of freight cars and the congestion of freight, the foundry has been unable to deliver this pipe?" Did you make that statement?

A. Speaking generally, speaking of pipe generally, I did, and I have so testified.

Q. You were not speaking of pipe only in reference to the extension to Springfield?

A. No, sir.

Q. Did you speak of the supply or the amount of lead necessary to make the extension?

A. In the way I have explained in my testimony; yes, sir.

Q. Relative to the proposed extension to Springfield?

A. In the manner I proposed in the testimony.

Q. What manner was that?

A. That one of the members of the Committee asked me in a casual sort of manner how much lead you think, Mr. White, it would [fol. 244] take to make an extension of this kind, and I replied, giving an approximate amount?

— What was that approximate amount?

A. I have forgotten now.

Q. 75 tons?

A. It may have been more, or it may have been less; I do not know.

Q. Mr. Izor said that that part of his report was true wherein he said that you also stated that the lead necessary to make this extension had been ordered from Omaha, Nebraska. Do you recall ever having said anything like that to Mr. Izor?

A. I recall having said that we had ordered some lead from Omaha, Nebraska, but I did not make it up for the Springfield extension. I said it was ordered from there.

Q. For what purpose?

A. For our purposes.

Q. What purposes was it ordered for?

A. For the extension of mains in the district.

Q. But not any new extensions?

A. New extensions, small ones in the populated part of the territory.

Q. Was this Committee concerned with that?

A. Not that I know of.

Q. But still you told them you had ordered lead from Omaha, Nebraska?

A. Certainly.

Q. But that it had nothing to do with the proposed extension to Springfield?

A. It had, to an extent.

Q. You had ordered some lead for this proposed extension?

A. No, sir.

By Deputy Commissioner Glennon:

Q. Did you order lead for the Woodhaven Gas Light Company?

A. We ordered the lead for the Woodhaven Gas Light Company, and the reason I explained this was to show how difficult it was to get supplies for anything.

[fol. 245] Q. Do the Woodhaven Gas Light Company buy direct the equipment as needed?

A. No, all the material is brought by the Brooklyn Union Gas Company and charged to the subsidiary companies, when used. It simplifies the accounting.

By Mr. Hazleton:

Q. You had bought the lead, or ordered the lead for the Woodhaven Gas Light Company, had you not?

A. For the 4th Ward subsidiary companies.

Q. How much lead had you ordered from Omaha, Nebraska?

A. I do not know. I do not remember.

Q. Have you any records which would refresh your recollection on that matter?

A. Not with me, but they could be obtained.

Q. You could get them, could you not?

A. Oh, yes.

Q. Was the matter of yarn mentioned?

A. Yes, sir.

Q. Of course, that was only general, and had nothing to do with the direct work in which this Committee was interested?

A. Except to show them that it is difficult to obtain anything in quantities.

Q. And that was due to war conditions?

A. That was due to war conditions.

Q. When was that meeting had?

A. That was at Mr. Izor's house in—

Q. In May, 1917, was it not?

A. Yes. There were three meetings.

Q. When Mr. Izor said that this part of his report was true, "that as soon as sufficient pipe is received to bring the main down Merriek Road to Springfield Avenue, they will begin work, and complete it as soon as possible," did you ever mention anything like that to him?

A. No, sir.

[fol. 246] Q. Can you give any reason for Mr. Izor, who was called as a witness by your concern, stating that such a statement was made by you?

A. I shall not attempt to give any reason.

Q. Can you give any reason now for his making such a statement?

A. Unless it is the desire on the part of a Committeeman to make

a good showing to his associates, and show some progress in the efforts which are being made. Such things may happen from time to time, and I think probably Mr. Izor went a little ahead of what was actually told him, and he inferred that probably we were going to do that. You will often get such statements from people who are interested in civic work from time to time. That is the only reason I can assign for it.

Q. Mr. Izor had resigned from the Committee when the Committee decided to bring this matter before the Public Service Commission. You know that, do you not?

A. I had heard something of that. I did not discuss it.

Q. Of course, you had those several talks with Mr. Izor before he was subpoenaed as a witness here, did you not?

A. The talks which you refer to are not quite——

Q. The talks between you and him, between you and him as a representative of the Committee.

A. I had one talk after he resigned from the Committee, if he resigned right after that meeting held down there at the Town Hall.

Q. How many personal talks or interviews did you have with Mr. Izor during this proceeding and before he was subpoenaed as a witness?

A. One at his house and one at the lunch room.

Deputy Commissioner Glennon: What do you mean by "during this proceeding"—since hearings began?

[fol. 247] Mr. Hazleton: Since hearings began, sir.

Deputy Commissioner Glennon: Is that your understanding, Mr. White?

The Witness: Yes.

By Mr. Hazleton:

Q. Was not partly the purpose of those interviews to ascertain what Mr. Izor was going to say, or knew, about this matter of the proposed extension of gas to Springfield?

A. Not exactly; no.

Q. When you say "not exactly," was not it at all part of your purpose?

A. It was my purpose——

Q. Just answer the question. Was it not at all a part of your purpose?

Deputy Commissioner Glennon: Let the witness answer the question.

A. (Continuing:) It was my purpose to ascertain if his ideas on the subject covered any specific promise to come down there. Once I found out that his ideas on the subject agreed with my own, I was satisfied.

Q. You did not find out that they agreed with yours as to the promise having been made?

A. Not having been made.

Q. He absolutely agreed with you on that?

A. Yes, sir.

Q. Can you give any reason for his coming here and testifying to something different than what you believed he agreed upon?

Mr. Dykman: I object to that.

Deputy Commissioner Glennon: Objection sustained.

Q. Mr. Izor also stated in his report that "Mr. White states to us [fol. 248] that the President of the Brooklyn Union Gas Company called him into his office a short while ago and gave him an order to make this extension as soon as material had been received." Did you say anything like that to Mr. Izor?

A. No, sir.

Q. You said nothing in substance like that to Mr. Izor?

A. No, sir.

Q. Certain pipe was delivered to Jamaica, was it not?

A. Yes, sir.

Q. You say there are 31,000 feet of 12 inch mains there at the present time, do you?

A. Yes, sir.

Q. What is 12 inch main used for, transmission or distribution?

A. Both.

Q. Used for both?

A. Yes, sir.

Q. What do you mean by transmission, leading it to the vicinity along the main roads?

A. Yes, sir, from the point of storage to some place where the destination is to be raised and the gas carried by that line is distributed to a certain point.

Q. You say there are less 12 inch mains in Jamaica now than there was, say, before the war started; is that right.

A. No, I should say not.

Q. What is the greatest amount of 12 inch main that you have had at Jamaica at any one time?

A. I cannot tell you that from memory.

Q. Have you anything here that would refresh your recollection?

A. Yes, sir.

Q. Will you produce it?

Mr. Dykman: May I ask counsel to make that question a little more plain; does he refer to this stacked pipe?

Mr. Hazleton: My question refers to that. I believe that is the only pipe that we mentioned.

[fol. 249] Mr. Dykman: There are pipes in the streets. I suppose counsel knows that.

Deputy Commissioner Glennon: They have only one storage yard.

A. 2,779 lengths in all of 12 inch pipe at that point, and at the present time 2,673.

Q. What was the greatest number of lengths of 8 inch pipe?

A. The stock remains the same, 562; no change.

Q. What other dimensions are there?

A. 4 and 6 inch pipe.

Q. What was the greatest number of 6 inch pipe?

A. We had during the period from October, 1916, to July, 1918, 2,563 lengths of 6 inch pipe; we have now 438, about.

Q. What was the greatest number of 4 inch pipe?

A. We have now about 432.

Q. Can you tell me any proposed extensions you had in view at the time of the delivery of this pipe, upon which you intended to use the amount of the 12 inch mains delivered there?

A. Yes, sir, I can tell you of one that would take quite a little bit. It is an extension of the Old South Road, which we are doing to boost our pressure all the way out to the Nassau County Line. There is another extension——

Q. Just a minute. The extensions along Old South Road extends along Old South Road from where?

A. From the end of it, at the present time, which is somewhere near Hollis. We are going to take it out to the Nassau County Line. That is one.

Q. Just a moment. When was that extension decided upon from Hollis?

A. We have been making it for the last four or five years, piecemeal.

[fol. 250] Q. The extension from the point where the main ends now, when was that decided upon?

A. That was decided upon sometime in 1916 as being necessary.

Q. When in 1916?

A. I cannot tell you.

Q. Have you anything to refresh your recollection on that point?

A. No, we would have to bring in some correspondence between the different engineers in order to indicate that.

Q. It was decided to extend it from Hollis to the Nassau County Line; is that right?

A. Yes, by degrees, or by short runs.

Q. Do you contemplate extending now by short runs, or at once?

A. Just as soon as we can get freight out, we are going right straight through to the Nassau County Line.

By Deputy Commissioner Glennon:

Q. What is the distance between Hollis and the Nassau County Line?

A. I cannot tell you.

Q. About?

A. I would not venture to say, unless I had a scaled map. It is over two miles. It may be three or four miles. It is quite a distance.

By Mr. Hazleton:

Q. How are you going to extend it; along what route?

A. Along the Old South Road as far as we can go along that

road, and then take the other available open roads that can be used. The Old South Road is closed at Hollis past the Odd Fellows Home, and then we have to take any other available route.

By Deputy Commissioner Glennon:

Q. What section do you intend to run through?

A. Through Hollis, and continue on right to the Nassau County Line.

[fol. 251] Q. What sections would be covered between Hollis and the Nassau County Line?

A. I designated the sections.

Q. What are they known as?

A. Hollis, Queens Village, and somewhere along any available street that we could get on, on which the authorities would allow us to extend. We had to be governed by the selection of the streets.

Q. Probably you did not understand my question. I was asking you what the villages were designated, or the towns were formerly named before they became a part of Queens?

A. We have only Hollis and Queens Village. That is about the only two we would run through there. There are no other smaller locally designated communities. I cannot recall any from memory.

By Mr. Hazleton:

Q. There is already gas in Hollis, and gas also in Queens, is there not?

A. Oh, yes.

By Deputy Commissioner Glennon:

Q. How many people reside in Queens Village, about?

A. I could not tell you, sir; I do not know.

Q. You may have had that in mind at the time you contemplated that improvement?

A. It is not an improvement.

Q. It is a replacement, is it?

A. It is an extension to improve the pressure, but we already supplied it; we supplied both Queens Village and Hollis, all the sections over to Hillside Avenue.

By Mr. Hazleton:

Q. But of course Queens is a fair distance from the Nassau County Line, is it not?

A. Queens Village is, yes, sir.

Q. Queens Village?

A. Yes, sir.

[fol. 252] Q. And Hollis is a greater distance, is it not?

A. Yes, sir, but we were proceeding in that direction.

Q. Where does your main now come in that you are going to extend to the Nassau County Line?

A. I have a note of that somewhere here.

Q. Will you see if you can find it?

By Deputy Commissioner Glennon:

Q. You say that gas is already installed and this is merely a replacement to get better service?

A. It is not a replacement; it is an addition.

A. An addition?

A. Yes, sir.

By Mr. Hazleton:

Q. Where does it commence?

A. It commences on South Street. I do not recall the name of the little street that intersects South Street at the point where it commences. Those streets, the names change over night, and I cannot tell you where it stops. I can point it out on the map. It is indicated on the map.

Q. Will you take this map, Mr. White—

Deputy Commissioner Glennon: I do not think it is necessary to go over that point.

Q. Does it extend to Farmers Avenue in Hollis?

A. I just told you I do not know where it stopped until I look at the map.

Mr. Dykman: Possibly if the witness had this map he could answer the question.

The Witness: I do not try to recall the names of the streets out there. It is impossible. Some people do not know the names of the streets, although they have lived there all their life.

[fol. 253] By Mr. Hazleton:

Q. Can you indicate on that map with the letter A to what point this main in Hollis now extends; that is Company's Exhibit No. 11?

A. Yes. It is called Beasley Avenue on here, and the locality is designated as Hollis Park.

Q. Will you mark that with the Letter A, please?

A. (The witness marking map.)

Q. And that is the end of the main where you have indicated by the point "A"?

A. Yes, sir.

Q. How is gas carried from that point into Hollis proper and Queens Village?

A. The connections are indicated on that map.

Q. Those connections are extended with what kind of pipe?

A. 4 inch pipe, 6 inch, 8 inch and 12 inch pipe.

Q. When you speak of an extension, or an addition, you mean an addition from the point "A" out to the Nassau County Line, do you not?

A. Yes, sir.

Q. Was the extension from the point "A" out to the Nassau County Line decided at one time?

A. Yes, sir.

Q. When was that decided?

A. Some time in 1916.

Q. Before the delivery of the pipe to Jamaica, or after?

A. Before.

Q. You are positive it was before?

A. Absolutely positive; yes, sir.

Q. How many miles of extension is that?

A. I have just told you a few moments ago, in answer to the Commissioner's question, that I would not say exactly how many.

Deputy Commissioner Glennon: He said about two to four miles.

[fol. 254] By Mr. Hazleton:

Q. Would you say it was as many as eight or ten?

A. No, I would not. It may be.

Q. You do not know how many houses are in Queens Village, do you?

A. No.

Q. What sections did you have in view of furnishing with gas in addition to Hollis and Queens Village in this proposed extension to the Nassau County Line?

A. I did not have in view to furnish a single house. The object of that line was merely to boost the pressure, or to reinforce the low points.

Q. What would be the purpose in extending it so far beyond Queens as Nassau County Line for only the necessity of increasing the pressure in points already supplied at Queens and Hollis?

A. In order that it might be linked up with the 12 inch main on Hillside Avenue.

Q. Where does that extended to, the Nassau County Line?

A. It will in time. These lines are gradually built up year by year. Probably I had better explain this.

Q. Has any decision been arrived at as to extending the main along Hillside Avenue?

A. Yes, sir.

Q. Where has it been decided to extend that to?

A. Up to its end, as far as we are concerned, or under the franchise, to the Nassau County Line.

Q. When was it decided to do that?

A. In 1916, 1915.

Q. Of course, there were no houses along Hillside Avenue from Hollis?

A. From Hollis, that does not cut any figure. It is an improvement of the gridiron distribution system throughout the whole territory. Whether there are houses, the running of a 12 inch [fol. 255] main does not cut a bit of ice.

Q. Was not anything said at any time about any of this pipe

that was delivered to Jamaica being used on extension to Springfield?

A. No, sir.

Q. In this talk that you gave at the Good Templars Hall, in March of this year, you gave as the reason why the work or the gas could not be installed, the high prices due to conditions and material?

A. Not wholly.

Q. What were the reasons you gave?

A. The first reason was the low rate that we were receiving for gas in the Woodhaven territory. The second reason was the high price of coal and oil that went into the manufacture of gas. The third reason was the high prices of material which would have entered into the construction of any extension; and the fourth reason was that the sales, by reason of the number of houses that we found existing in this territory, that had applied for gas, were not sufficient to warrant the extension anyhow.

Q. Did you make that statement at the meeting?

A. I did, sir.

Q. But you did make the statement that one of the reasons was the high cost of material necessary to install the gas, did you not?

A. That was one, yes, sir.

Q. Do you expect that condition to go down or change?

A. I hope so.

Q. Do you reasonably expect it?

A. It has gone down quite a little bit since the first of the year. I am in hopes it will go down still further.

Q. What percentage?

A. To give you an idea of the actual conditions: in January, pipe was \$70 a ton, and in May it dropped to \$57 a ton, and by [fol. 256] reason of that fact I had to reduce my original estimate. Since then it has dropped down \$6 more, so now it is \$51 a ton, whereas in January it was over \$70 a ton.

Q. Do you expect any further decrease?

A. Yes, sir.

Q. Do you expect a decrease in the other materials necessary?

A. Yes, sir.

Q. Then you say the cost of materials necessary in bringing gas into the sections mentioned will decrease in the near future?

A. Yes, sir; that is my prediction.

Q. Of course, you have read statement of many prominent officers and business men of the country to the contrary, that they do not expect any decrease in the cost of labor and material?

A. I have not read any statement.

Deputy Commissioner Glennon: What difference does it make what this witness' expectations are?

Mr. Hazleton: All right.

By Mr. Hazleton:

Q. You heard me ask Mr. Izor here "Did he report on December 11, 1916, to the Springfield Civic Association that the Gas Com-

mittee reported calling upon the gas company and learning that the company had bought the pipe and would lay the pipes in the early Spring"? You heard him being asked that question and saying it was being there every day?

Mr. Dykman: I object.

Deputy Commissioner Glennon: What is the answer?

The Witness: Yes.

[fol. 257] Mr. Dykman: The question is not a fair quotation from the minutes.

Deputy Commissioner Glennon: The witness has testified to hearing him say it.

Mr. Dykman: I think, with all due deference, that the witness should not be encouraged to answer until the question has been ruled on.

Deputy Commissioner Glennon: I rule he can answer the question, and make his answer, yes or no.

The Witness: Yes.

By Mr. Hazleton:

Q. At this meeting in Springfield, in March, of this year, you addressed, do you remember being asked a question by Mr. Henning?

A. I do not know Mr. Henning.

Q. Do you recall being asked this question in substance by him: "I noticed at Chichester Avenue and Sutphin Boulevard a large pipe or pipes; will you tell us what those pipes are intended for"? Do you recall being asked that question?

A. No. I was asked some questions about pipe, but do not recall that particular question.

Q. Do you remember Mr. Henning testifying and saying that he asked you that question?

A. No. Probably I was reading some stuff at the table when he testified.

Q. And, of course, you did not make this answer: "Those pipes were purchased for the extension to Springfield, but during the war the Government took over the largest part of them"?

A. I do not recall any such answer.

Q. Did you say during the war that the Government took over part of these pipes?

A. I did say the Government took over some pipe.

[fol. 258] Q. What pipe did you mean?

A. I meant the pipe that we had used around the different works for construction of oil extraction to be used in connection with munitions, and also pipe that we used at the naval hospital. I also——

Q. Did you——

The Witness: Can I finish my answer, Mr. Commissioner?

Deputy Commissioner Glennon: Yes, go ahead.

A. (Continuing:) I also meant that we used some 12 inch pipe in the case of certain houses in South Brooklyn and several other places which I cannot recall at this time, but which could be produced.

Q. You did not mean that any pipe on Chichester Avenue or Jamaica had been taken by the Government?

A. I mean just what I have answered in reply to your question.

Q. Did you mean any of that pipe?

A. I certainly did.

Q. What was your purpose in telling him that the pipe had been taken over?

A. To show that some of it had been used.

Q. What was your purpose in showing them that some of that pipe had been used, when you say it was not to be used for the Springfield extension?

A. To show them that we intended to use the pipe for general purposes.

Q. But they were questioning you relative to the Springfield extension, were they not?

A. They may have been.

Q. Do you know whether or not they were?

A. I assume they were.

[fol. 259] Q. Was not that what you went there for, to explain the Springfield extension?

A. We went there not to explain the Springfield extension, but to explain why it was impossible to do it.

Q. That was not mentioned, anything about the proposed extension to Springfield, but you say you went there to explain that you could not do it?

A. Precisely.

Q. Did you mean this pipe had been taken when you were there talking about the Springfield extension, and this pipe had nothing to do with the Springfield extension?

A. To illustrate the fact that it was used for general work, and that it was never intended for their extension alone, and I wanted to show the other uses for the pipe. There were many questions asked me. They were building their hopes from where to pull the pipes, and I wanted to tell them there were other things to use that pipe for than the Springfield connection, and we intended to use it for those other purposes.

Q. You did also intend to use it for the Springfield extension?

A. Not necessarily.

Q. Was it? Not necessarily.

A. If it was found that this Springfield extension was worthy of consideration, some of that pipe would have been used for that purpose; but we would have had to purchase a great deal more, because that was not half enough.

Q. How many feet of 12 inch main do you need, in your estimate which you have submitted here, and which is in evidence?

A. You will not object if I refer to my notes?

Q. No.

A. We shall need 152,754 feet of 12 inch pipe.

Q. To make the extension into Springfield—ardon me. With-
[fol. 260] draw that question. You said of 12 inch pipe?

A. Yes, sir.

Q. To make the extension into Springfield, how many feet of 12 inch pipe will you need?

Mr. Dykman: In view of the confusion in connection with these names, will counsel state what he means by Springfield?

Deputy Commissioner Glennon: What part of Springfield?

Mr. Dykman: There has been so much confusion about names I would like to know what counsel means by Springfield; whether he is simply re-introducing in evidence this tabulation, which is in evidence, by asking Mr. White how many feet of pipe he would need to bring the extension into Springfield; does he refer to the outside of Springfield, or is he talking about a different Springfield?

Mr. Hazleton: I am talking about the same Springfield that Mr. White is talking about. I mean the same Springfield that Mr. White means. I will find out what he means.

Deputy Commissioner Glennon: Is that the center of Springfield?

Mr. Hazleton: I do not know what he means. He just says Springfield. I will try to bring that out.

Deputy Commissioner Glennon: Ask him.

By Mr. Hazleton:

Q. How many feet of 12 inch pipe do you need for that extension?
A. 27,218.

[fol. 261] By Deputy Commissioner Glennon:

Q. What part of Springfield does that cover?

A. The territory known as Springfield Village, which everybody who lives down there understands what it is, as well as I do. It is designated on all maps that are published; that is Springfield, which we will define briefly by the boundaries: On the easterly side by Springfield Road, which goes south quite a considerable distance, and on the north by the Merrick Road, up to, I guess, about Compton Lane, where Laurelton commences—

Q. Up to what point?

A. Up to Compton Lane, where Laurelton commences, somewhere near there, and east up Laurelton—I think I got the points of the compass mixed. There is some fringe of Springfield village on the other side of Merrick Road going north towards Central Avenue. There is a fringe of buildings that are constructed on either side, on account of the cemetery. That is the legal description of the Village of Springfield as I know it, and as the people down there understand it.

Q. That was the territory you meant in making this estimate which you have just given us?

A. Yes, sir.

Q. Where would you start your main in bringing the gas into that section in Springfield?

A. I would first start with the transmission line—this is necessary to be constructed before any distribution lines are extended—at New York Avenue and Platt Street. I would go down New

York Avenue to Locust Avenue, through Locust Avenue to Merrick Road, down Merrick Road to Springfield Road, or Springfield Avenue. That would complete our transmission line. From that [fol. 262] point we would fan out and supply the streets at Springfield.

Q. But from Cedar Manor down to Springfield Avenue, that would constitute your transmission line, would it not?

A. Yes, sir.

Q. Near the point where the transmission lines commence and in the extension as just described by you, is there any main that is nearer to that point than the main at Cedar Manor?

A. Not a main that could be used for that purpose.

Q. Where is that main that you say is not of the kind that could be used for this main?

A. I did not say that. There are many of them. They show on your map.

Q. I cannot read the names from the map.

A. I will assist you in reading them.

Q. Will you give the vicinity?

A. I cannot do that. I would not attempt to do that from memory. They are all indicated here on this map.

Deputy Commissioner Glennon: Hand him the map.

Mr. Hazleton: Here is the map. (Handing map to witness.)

By Mr. Hazleton:

Q. Will you give us the nearest one?

A. I think the 12 inch main that was mentioned some time ago is a little nearer to New York Avenue and Platt Street, for one.

Q. Where is the 12 inch main?

A. At Old South Road and Beasley Avenue.

Q. How far is it from the point of transmission to Springfield?

A. That is quite near St. Albans. It is quite a bit nearer Springfield than New York Avenue and Platt Street.

[fol. 263] Q. What is the distance, would you say, from that main you have just mentioned to the point mentioned?

A. I would not say offhand.

Q. You have your map there in front of you and it is made to scale.

A. No, this is not to scale. This is only a picture map.

Q. Then, you cannot give me the distance?

A. Not from memory. It could be produced.

Q. What is the distance from Cedar Manor to the point of transmission at Springfield Avenue?

A. 2.45.

Q. Is not this point from this last main you have mentioned to the point of transmission in Springfield less than half that distance?

A. No; I do not think it is. Wait a minute. Yes, I guess it is half the distance.

Q. Could that main be used for the extension of gas into Springfield section?

A. No, sir; it could not.

Q. Why not?

A. Because it would be impossible to get the volume of gas down through a distribution line which is dependent for its supply on smaller lines in the vicinity. In order to supply Springfield we should have to lay what we call a transmission line and put pressure through it, which is higher than distribution pressure, for the purpose of getting the volume of gas necessary to supply the territory in the Springfield section. That is the reason that the main cannot be used for that purpose.

Q. This main you have just mentioned that is nearest to your point of transmission, that is a 12 inch main, is it not?

A. Yes, sir.

Q. And that is supplied from what kind of a source?

A. From the Jamaica holder.

Q. The main that supplies the 12 inch main is not more than that 12 inch main, is it?

A. No.

[fol. 264] Q. And the main that goes into Cedar Manor is a 12 inch main, is it not?

A. Yes.

Q. And still you say it would be impossible to supply Springfield with gas from this main which is half the distance away from that point of transmission that the main in Cedar Manor is?

A. Yes, sir; that is right.

Q. Do you mean it would be difficult, or impossible?

A. I mean it would be impossible.

Q. Have you not a main that is nearer Springfield than even this last main which you have mentioned?

A. Yes, sir; there is one on the Springfield that stops at the Convent.

Q. Is that a 12 inch main?

A. No; that is a 6 inch main.

Q. Could gas be supplied from that point?

A. No, sir.

Q. Is it impossible?

A. Yes, sir.

Q. For what reason?

A. Insufficient volume.

Q. Is the 6 inch main at that point supplied from a 12 inch main?

A. No, sir.

Q. Where does that 6 inch main begin?

A. I think, from memory, Hempstead Turnpike.

Q. How far is that from the point of ending of the 6 inch main?

A. You mean from the Hempstead Turnpike to the Convent, what distance that is?

Q. Yes.

A. I would not venture to say. It is quite a considerable distance; several thousand feet, but how many thousand feet, I could not tell you. I would not venture to say.

Q. When you mention St. Albans in your estimate, which you have given to the Commission, what section did you mean, Mr. White, just so we will be certain?

A. The part where the golf club is situated, and the buildings in that vicinity. Also the portion known as Addisleigh, which is [fol. 265] really a part of St. Albans, and the surrounding streets and roads which are closely connected with that legally designated section.

Q. Do you mean that section which is described on your map as St. Albans?

A. Yes, sir.

Q. Your map which has been introduced in evidence here?

A. Yes, sir. At the last hearing it was introduced. I did not introduce it.

Q. You mean this map, Exhibit No. 11?

A. Yes, sir.

Q. And your estimates are based on the section described in this map?

A. Yes, sir.

Q. What is the nearest main to St. Albans?

A. This 12 inch main that we have been talking about before, at Old South Road and Beasley Avenue.

Q. How great a distance is that main from St. Albans?

A. I would not venture to say. I never measured it. I do not know.

Q. Possibly 2,000 feet?

A. No, it is less than 2,000 feet. No, it is more than that. I do not know exactly.

Q. Could you give me the exact figures?

A. I could if I had a map, if I had a map that was made to scale.

Q. That is considerably nearer St. Albans than this point away out in Cedar Manor, is it not?

A. Yes.

Q. Could gas be supplied to St. Albans from that point?

A. No, sir.

Q. Why not?

A. Insufficient volume and inability to maintain the required pressure.

Q. It is a 12 inch main, is it not?

A. Yes, sir.

Q. What causes the insufficient volume?

A. It would not carry that distance and do the duty it is doing now proficiently.

[fol. 266] Q. Why not?

A. For the reasons I have given.

Q. What reasons?

A. Insufficient volume and inability to maintain the required pressure.

Q. Then you have a different volume and a different pressure in Cedar Manor?

A. No.

Q. At this point, then you have——

A. No.

Q. Will you kindly explain that to us?

A. I have explained that. We shall have to take the 12 inch main that exists now and runs down to Platt Street and New York Avenue, we shall have to take that 12 inch main and strip it of all connections to intersecting streets, and connect that direct at the Jamaica holder, and then convert that to a high pressure or booster main, and put in that higher pressure than we can give it by the weight of the holder, by other mechanical means.

Q. Could you do that with the main nearest St. Albans?

A. No.

Q. Why?

A. Because the main is supplying distribution at the intersecting streets at different points. It was put in there for that purpose solely, and if we withdrew that main from that service, we would not have sufficient volume of gas in that particular vicinity.

Q. Have you a main on Merrick Road which is still nearer St. Albans than this last mentioned main?

A. Yes, sir.

Q. Could gas be supplied from that point?

A. No, sir.

Q. For the same reasons you have previously given?

A. No, there is another reason. I notice a 3 inch line from a little creek that exists on the west side of Merrick Road, and it is a continuation of a 6 inch main branching out from Cedar Manor, and continuing that main across Merrick Road to the Jamaica Oaks, [fol. 267] which is owned by Sweet Brothers, real estate people, in Jamaica, and then for future distribution requirements we had the connection extended down Merrick Road a short way and put in what will be ultimately our size. That whole gridiron main is fed by a little 3 inch pipe that goes through Cedar Manor, so its inability to supply St. Albans is obvious.

Q. Would it be impossible to have any of the 12 inch mains which are nearer St. Albans than Springfield than this main at Cedar Manor, so they could supply the required amount of gas to the points desired?

A. It would be impossible for the reason that you would have to take them away from the duty they are now performing and apply them to this purpose.

Q. Did you have to do with the main that leads into Cedar Manor?

A. Yes, sir. I have explained that.

Q. That is also performing now, is it not?

A. Yes, sir.

Q. You have to change that main?

A. I have to change that main.

Q. Could you do that with the other mains that are nearer Springfield?

A. No.

Q. Why?

A. Because they are connecting intersections of the other streets.

This main is in such a condition now that we cannot strip it of its connections and substitute another line of like diameter in another section of Cedar Manor to do the duty it is now performing, and utilize the booster main to continue down Springfield Avenue and Merriek Road.

Q. Could not that be done if it were opened at points nearer Springfield and nearer St. Albans?

A. No, it could not be done. It could be done, but it would be dangerous to do it, because you would disrupt the layout.

[fol. 268] Q. It could be done?

A. Nothing is impossible. It could be done, if we had the means of making the expenditure.

Q. That could be done, and if it were done, the expenditure would be less than bringing the gas from Cedar Manor and making the changes to Cedar Manor?

A. No, it would be greater.

Q. Are you certain about that?

A. I am positive as to that.

Q. You, in your estimate, take in the section known as Idlewild Park, do you not?

A. Yes, sir.

Q. By Idlewild Park, as used in your estimate, you mean the section described on your map, which is known as Company's Exhibit No. 11?

A. Yes, sir.

Q. And you say you need, to go into Idlewild Park, 13,972 feet; is that right?

A. Yes, sir; that is right.

Q. And the total cost there would be \$30,650.53?

A. Yes, sir.

Q. You do not know that the Committee does not ask the extension of gas into that section, do you, Mr. White?

Mr. Dykman: I object to that as improper cross-examination.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

A. I did not pay any particular attention to what the Committee covered. There is so much back of the feeling that it was impossible to make up their mind on what they intended.

Q. In your estimate as to the cost of extending the gas into Jamaica Gardens, you did not take into consideration that the Committee did not ask the extension of gas into that section, did you?

A. No, sir; I did not.

Q. You did not?

A. No, sir.

Deputy Commissioner Glennon: What section does the Committee ask to have gas extended into?

Mr. Hazleton: What section?

Deputy Commissioner Glennon: Yes, what sections? Just de-

scribe them on the map. Just call them off on the map so the witness will know and we can then eliminate the sections you do not want gas extended to.

Mr. Hazleton: The Committee asked for the extension of gas into all sections excepting Jamaica Gardens, Bay View Landing, Idlewild Park, and what they term the dead ends of the territory of Springfield, Laurelton, etc., that go down into Rock Creek section, and into the southeast corner of Queens County. We only ask that gas be extended into the thickly populated sections. If you want to go down into the dead ends, you will be supplying gas for the next twenty years to come.

Mr. Dykman: You have taken those names, Mr. Hazleton, from one of the Company's tabulations, from one of the tabulations I offered in evidence.

Mr. Hazleton: No.

Mr. Dykman: I thought you were reading the names from that?

Deputy Commissioner Glennon: What are you taking the names from?

Mr. Hazleton: What names do you mean?

[fol. 270] Deputy Commissioner Glennon: You are looking at an exhibit which was offered in evidence, and I asked you to eliminate from *to* the places indicated on that exhibit which you did not wish to have gas installed in.

Mr. Hazleton: Yes, and I struck off that exhibit Jamaica Gardens, Bay View Landing and Idlewild Park, and the dead ends of the territory.

Deputy Commissioner Glennon: Is there anything on the exhibit showing the dead ends?

Mr. Hazleton: It does not show that.

Deputy Commissioner Glennon: Are those portions covered by any names on that exhibit?

Mr. Hazleton: No, you would not be able to make that out from the exhibit.

Deputy Commissioner Glennon: Excluding those names, the names of those territories, how many feet of pipe would be eliminated by that?

Mr. Hazleton: Just taking the names of those three places?

Deputy Commissioner Glennon: The names of those places which you have just mentioned.

Mr. Hazleton: Do you want me to ask that question?

Deputy Commissioner Glennon: No, you can do it yourself. We want to save a little time if we can.

Mr. Hazleton: Idlewild Park, 13,972 feet; Jamaica Gardens, 7,648 feet, and Bay View Landing, 10,025 feet.

Deputy Commissioner Glennon: A little over 30,000 feet: is that right?

[fol. 271] Mr. Dykman: 31,645 feet.

Deputy Commissioner Glennon: Then you say in addition to that there is probably included what you refer to as some dead ends?

Mr. Hazleton: That is the fact. The map takes in the entire section.

Deputy Commissioner Glennon: That is all. We want to have it clear.

By Mr. Hazleton:

Q. Mr. White, in making up your estimate as to what it would cost to introduce gas into these sections, you did not follow the lines as laid down and described in the maps which the Gas Committee introduced in evidence here; did you, Mr. White?

A. No, sir; I did not.

Q. You took in the entire section that is described on the gas company's Exhibit No. 11 here, did you not?

A. Yes, sir.

Q. You have upon your estimate here a column in which you set forth the feet per house—

A. Yes, sir.

Q. Just what did you mean by that, Mr. White?

A. I mean, for instance, taking into consideration the first community entered, St. Albans, the 168 houses there took 44,391 feet to supply all of the 168 houses. That 168 divided by the number of feet gives an average of 264 per house.

Q. Then the 44,391 feet included the transmission and the distribution?

A. No, sir, only the distribution.

Q. And the distribution—by the distribution do you mean the extensions along the lateral streets which come into the main proper?

A. I mean everything except 12 inch main to be transmission [fol. 272] line, going clear back to the Jamaica holder. Everything else is distribution.

Q. When you used feet there, you mean 6 inches, 8 inches, 4 inches, and all kinds of pipe used in leading the gas into the houses?

A. Yes, sir.

Q. Did you measure each distance exactly?

A. My assistant did; yes, sir.

Q. Who measured it?

A. My assistant, Mr. Waldron.

Q. Did you tell here how he measured it, and what means he used in measuring the distances?

A. Yes, sir.

Q. What means did he use?

A. A steel tape having an odometer on an automobile for the greater distance.

Q. Was this odometer tested before you started out?

A. Yes, sir.

Q. That was the method used in connection with the installation of pipes, not only in this instance, but in many other instances; is that right?

A. Yes, sir.

Q. Mr. White, have you not the main which leads down to the section known as Jamaica Junction?

A. No, sir. We have a main that ends on the Rockaway Road at Linden Street, which is quite removed from Jamaica Junction.

Q. Jamaica Junction begins at a point where Locust Avenue intersects Rockaway Turnpike, does it not?

A. Yes, sir.

Q. As indicated on your map here?

A. Yes, sir; I think it does.

Q. What?

A. I think it does.

Mr. Dykman: May the witness see the map?

Deputy Commissioner Glennon: Yes.

[fol. 273] By Deputy Commissioner Glennon:

Q. Are the mains indicated on the map?

A. Yes, sir.

Mr. Hazleton: No, sir, they are not.

The Witness: Yes, sir, they are.

Deputy Commissioner Glennon: We can locate the mains ourselves that are located on the map.

Mr. Hazleton: That one does not. I cannot find it. I want to find out where it is.

The Witness: There is the Locust line (indicating), before you strike the Locust line, between New York Avenue and Locust Avenue. There it is (indicating).

By Mr. Hazleton:

Q. Have you not a main there in the immediate vicinity?

A. No, sir.

Q. Where does that main stop that goes along the Rockaway Turnpike and supplies South Zone Park?

A. That stops at Rockaway Road and Linden Street.

Q. How far is that from the intersection of Locust Avenue and Rockaway Turnpike?

A. It is away up here (indicating). I would hate to have to walk it on a hot day. It is easily a couple of miles; easily that.

Mr. Dykman: Is that on the map?

The Witness: No, a part of the map is not made out; the part of the map that covers that section is not made out.

Q. You know it is not as great a distance as that, do you not, Mr. White?

A. No, I think it is fully that.

[fol. 274] Q. You think it is fully two miles?

A. I think it is.

Q. You fixed the point at Rockaway Road and Linden Street, did you not?

A. Yes.

Q. Could gas be supplied to Springfield or Jamaica Junction from that point?

A. I do not know. I could not tell you exactly. It would be dependent on the conditions that would govern it, and the length of the run. That I would have to find out correctly before I could answer your question yes or no.

Q. That extension was extended along Rockaway Park to supply the South Zone section, was it not?

A. Yes, sir.

Q. It extends some distance beyond South Zone Park, does it not?

A. No. It stops right near that section.

Q. You could not say whether or not gas could be led into Springfield or Jamaica section?

A. No, without exact line measurements.

Q. As a matter of fact, in picking out or selecting this point at Cedar Manor at which the laying of pipe would start, to lead the gas into Springfield, and St. Albans, and the other sections, you have selected the point which is farthest away from those sections, that is, the main which is farthest away from those sections, have you not?

A. The distance did not govern my selection.

Q. I am saying whatever did govern your selections caused you to select the main farthest away from any and all of those sections?

A. Yes.

Q. Springfield is indicated on your map. That is the point where transmission would commence and the point where transmission would commence in St. Albans; that is, that point in Springfield is farther away from Cedar Manor point than St. Albans, it is not?

A. Yes, sir.

[fol. 275] Q. Would you say it is twice the distance?

A. I would not attempt to say what the distance is.

Q. Then they intended to take the pipe to Springfield and then take it all the way back to St. Albans; is that right?

A. Yes, sir.

Q. When it would be nearer to come from Cedar Manor to St. Albans than pipe back from St. Albans?

A. No, that is not the idea. The idea is to get the proper distribution lay-out for future requirements, and in this lay-out which we have presented for your consideration, and the information of the Commission, is at St. Albans point, we shall have the future equipment, should that territory be built up in years to come. We have to lay out the territory in certain ways for future requirements, and it was my endeavor to make known the need so there would be as little obsolescence as possible.

Q. Of course, you are not able to say what it would cost to lead gas into the sections which the Committee have not asked that gas be extended to in the map introduced in evidence here, are you?

A. I have not seen the maps.

Q. You are not able to say that now, are you?

A. Except if you eliminate the three that you have mentioned a few moments ago, I can deduct the cost from the total and give you that information.

Q. I do not want that, Mr. White. What I asked you is this: You are not now able to say what it would cost to supply gas to the sections described by the Committee here in the maps introduced in evidence?

A. Is not that the same as your question? I think that is an improper question. Is not that the same territory you described?

Q. No.

[fol. 276] Deputy Commissioner Glennon: Does that map indicate the number of feet of pipe that might be installed, or the number of feet of territory covered?

Mr. Hazleton: No. We will have an engineer testify as to that, as to the number of feet included.

Deputy Commissioner Glennon: How can this witness answer that?

Mr. Hazleton: You see the point and purpose of the question. It is evident and obvious without asking the question—these evidently were based upon the introducing of gas into one section, where we ask for the introduction of gas into a section absolutely different from that section, so far as the amount of territory is concerned.

Deputy Commissioner Glennon: I suppose he has gone as far as he can in testifying as an expert.

By Mr. Hazleton:

Q. You have not looked at those maps at all which the Committee have introduced in evidence?

A. No, sir.

Q. You do not know what territory they described?

A. No, sir.

By Mr. Deegan:

Q. Mr. White, have you available the detailed data on which this Exhibit No. 14 was based?

A. Yes, sir.

Q. Have you it with you?

A. Yes, sir.

Q. Will you leave it here so our engineers may check it up? I [fol. 277] understand from our engineers that they cannot do anything until they have placed at their disposal detailed data on that.

Deputy Commissioner Glennon: Mr. White will be only too glad to do that.

A. I will be only too glad to call and confer with the engineers and give them all the details, but the data I have with me has additional notes on it, pertaining to other matters, and I would like to keep this for my own information. If you would be able to let

me know, I would come over here and go over the matter with them with pleasure.

Mr. Deegan: I understand from that they tell me it will take probably eight or nine working days to properly check this exhibit, and they thought if all the stuff was put at their disposal it would help. Otherwise, it would probably be a question of weeks.

Deputy Commissioner Glennon: Have you got copies, Mr. White?

The Witness: The copies are at the office.

Deputy Commissioner Glennon: You can send them over, can you not?

The Witness: If you wish it, certainly.

By Mr. Deegan:

Q. With regard to this pipe that was ordered in October, 1916, how much was ordered at that time; just read the amount and the size?

A. 4 inch, 833 lengths.

Q. By the way, Mr. White, have you also there the cost?

A. No, sir; I have not that with me.

[fol. 278] Q. You can furnish that also, can you not?

A. Yes, sir.

Mr. Deegan: I will ask the witness to produce that.

The Witness: All right.

A. (Continuing:) 4 inch pipe, 833 lengths; 6 inch, 2,563 lengths; and 12 inch, 2,779 lengths. Did you want when it was ordered?

Q. It was ordered in October, 1916, was it not?

A. Yes, sir.

Q. When this pipe was ordered, was there any additional pipe in the Jamaica storage yard?

A. No, sir; we were clean out.

Q. How much of this pipe was taken for Government purposes?

A. I could not give you the exact amount.

Q. As near as you can?

A. I would not even endeavor to approximate it. However, it can be obtained if you wish it.

Q. Have you there the amount of this pipe that was used by the companies in the 4th Ward?

A. No, sir. I only have the difference between what was on hand July 1st, and what was on hand when full delivery was made, the full amount on hand.

Q. You could give the full amount used by the Woodhaven, the Richmond Hill & Queens County Gas Light Company and the Jamaica Gas Light Company?

A. Yes, sir. I have only given the difference of the two stocks. To give you that, I will have to separate from that difference the amount used for Government purposes, and that, of course, I have not got.

Q. You can obtain that, can you not?

A. Yes, sir, I could dig it up.

[fol. 279] Q. I assume that all the pipe that was ordered was finally delivered?

A. Yes, sir.

Q. The last delivery being made in June, 1918?

A. In July, 1918.

Q. Was the lead ordered before or after that?

A. We are always ordering lead in quantities as our stock is depleted, and my best recollection is that there was lead ordered at that time.

Q. Do you recall how much?

A. No.

By Deputy Commissioner Glennon:

Q. How much lead have you on hand now?

A. I could not tell you.

Q. Can you tell us from the records?

A. From the records in the office; but not from anything I have got with me.

By Mr. Deegan:

Q. What about this yarn? What do you mean by yarn?

A. Yarn is that material that is used to impart gas tightness; the yarn is placed in the joint first, and afterwards the lead is driven against it, the lead serving as a locking medium.

Q. Was there a certain amount of yarn ordered about the same time that the pipe was ordered?

A. I do not think so. I think we were unable to get yarn at that time. We were trying to scrape it up here and there in small quantities, to the best of my recollection. There may have been some. I could confirm that by looking over the records.

Q. How much is on hand now?

A. I could not give you that. I could not even approximate it.

Q. Approximately?

A. Or even approximately.

Q. What is the practice of the company with regard to ordering [fol. 280] pipes, mains, distribution service pipes; that is, do you estimate approximately how much you may need within the next year, or within the next two or three years, or five years?

A. At the end of each calendar year, I go over the stock and ascertain what we have on hand, and then I take the previous three years, the use of the different sizes of cast-iron pipe and steel pipe and wrought iron pipe, and I take an average of that used for three years, and that largely governs me in my requisition that I make out for the purchases the following year.

Q. That was the system you followed when you prepared your order before October, 1916?

A. Yes, sir. That is the system we have always followed for the last ten years.

Q. In connection with these conferences regarding the alleged promise to extend the mains to Springfield, and other sections, did you prepare any engineering plans?

A. (No answer.)

Q. What did you do? I think it has been testified that you prepared a survey in 1915 and that you had certain figures at one time and certain other data?

A. Yes, sir.

Q. Have you available the data you had?

A. Yes. We sent twenty or thirty men down there for a couple of weeks and made a full survey of Springfield and Laurelton, and I think St. Albans, and a few of the other territories, and we directed them to pick out the thickly populated sections and ignore as far as possible the spasmodic building places along the road. I have some data that was prepared as a result of that survey which occurred, as I say, in 1915.

Q. I would suggest that you also produce that at a later hearing, if you have not it with you now. I would like to know exactly the [fol. 281] estimated cost at that time, the number of houses, the estimated return on the extension, and exactly the localities which you considered in making up your surveys?

A. Yes, sir.

Q. After that, did you also make further surveys?

A. I watched the territory very closely between 1915, and the very last survey we made in this building survey, the one presented in Exhibit No. 11; that is the building survey made by Mr. Waldron under my immediate supervision and direction.

Q. Was that substantially the same map which you had with you when you appeared before this meeting in Springfield in March of this year?

A. That is figure of same map.

Q. Did you also have with you at that time substantially the same figures that are shown on this estimate, Exhibit No. 14?

A. No, I had not made that up at that time, this map, this last survey had not been made at that time that we appeared at the Town Hall. It was not the original 1915 survey, and after I appeared at the Town Hall then we made the second survey of May, 1919, and we added to that map the houses that had been omitted on the 1915 survey.

Q. Approximately how many more houses were there?

A. Between three and four hundred, from memory.

Q. What is the present source of gas supply of the Woodhaven Gas Light Company?

A. It is supplied from the holder at Jamaica.

Q. Whereabouts in Jamaica is the holder located?

A. At Beaver Street, and back of the old Jamaica Railroad Station. That is the best location I can give you, and in addition to that we have transmission lines which convey the gas out in various portions [fol. 282] of the territory and feed governors that are connected with the distribution line, and in that way the pressure is maintained throughout the territory.

Q. Does the Woodhaven Gas Light Company manufacture any gas?

A. No.

Q. From what source is this gas transmitted to the holder at Jamaica taken?

A. From Brooklyn.

Q. From the different sections of the Borough?

A. Yes, sir.

By Deputy Commissioner Glennon :

Q. Brooklyn; what do you mean; what gas?

A. From the Brooklyn Union manufacturing plants.

By Mr. Deegan :

Q. What size transmission mains are used by the Woodhaven Gas Light Company to the territory at the present time; all of those sizes?

A. The transmission main, there is a 24-inch main that goes up Broadway from Brooklyn and stops at Van Wyck, and then reduces to 12-inch and continues up Broadway to Jerome Avenue, as it is sometimes called, to the holder at the back of the old Long Island Station. In addition to that, I think, from memory, there is a 16-inch transmission line that goes a part of the way up Broadway. I may be wrong about that, but I think there is a 16-inch main.

Q. Let me get this clear, Mr. White. The gas which is supplied by the Woodhaven to its consumers, does all that gas come from the holder at Jamaica, or is some of it distributed from these transmission lines leading from the Brooklyn Union tanks out to Jamaica? [fol. 283] A. Yes, sir. Those lines are broken, or tapped at several points, and the transmission 12 inches taken from them, and they are continued on to other conditions, and then in this condition the gas comes to the holder at Jamaica.

Q. Could you say approximately how many of the consumers are served by the gas coming from the Brooklyn Union's gas plant in Brooklyn, as compared with the number of consumers served from the holder at Jamaica?

A. I cannot, because of the fact that the gas gets into the entire gridiron system of distribution, and the Lord only knows how that travels.

Q. What about the pressure supply; is the pressure standpoint the same from the holder as from the transmission mains?

A. It is maintained according to the rules of the Commission.

Q. What was the average pressure maintained by the company during the past year?

A. I could not tell you. That is in a different department.

Q. You do know what the rate charged by the company for domestic and commercial lighting is, do you not?

A. I have heard it discussed, but I have not positive information.

Q. You do not know what rate is charged by the Woodhaven for gas supplied to its consumers?

A. Yes.

Q. Will you please state it?

A. One dollar; that has not been the charge; the company is not allowed—

Q. At any time has a less rate than that been charged?

A. Yes, at one time it was reduced to 95 cents.

Q. So the company only received 95 cents, or one dollar?

A. One dollar.

[fol. 284] Q. It always collected one dollar?

A. It collected one dollar, and five cents was placed in the bank.

Mr. Dykman: Is this cross-examination? There is no necessity that I can see to object, but I do not recall examining the witness on rates.

Mr. Deegan: No, but that is something Mr. White would know.

Deputy Commissioner Glennon: We all know it.

Mr. Deegan: I want it to appear in the record what the rate is.

By Deputy Commissioner Glennon:

Q. The rate is one dollar, is it not?

A. Yes.

Q. Does the Woodhaven Gas Light Company pay the Brooklyn Union Gas Company for gas furnished to its consumers?

A. Yes, sir, under some kind of an arrangement.

Mr. Dykman: I shall have to object.

Deputy Commissioner Glennon: Is there anything else, Mr. Deegan? We would like to finish this case as soon as possible.

By Mr. Deegan:

Q. This distribution system, which you have estimated to cost over \$693,000, as shown on Exhibit 14, would serve how many additional consumers outside of the 1,391 houses shown on the same exhibit?

A. Many more.

Q. How many more?

A. I could not tell you.

Q. Three times?

A. It would depend on the amount consumed and the nature of the [fol. 285] consumption, whether commercial or domestic; there would be many factors.

By Deputy Commissioner Glennon:

Q. You cannot answer the question, in other words?

A. I cannot intelligently answer the question.

Q. You know the average consumption, the domestic consumption?

A. The average consumption of the Woodhaven Gas Light Company for 1918, I know; yes, sir.

Q. What is it?

A. It was somewhere around 2.38 per month.

Q. Taking that as a basis, could you then answer the question?

A. No, unless I speculate as to the future; I do not know what the future will be. We know what the present need of the Woodhaven is.

Q. Allowing for the normal growth, substantially, what has been the growth in the Woodhaven territory?

A. Even then, I would hesitate to answer right off the stand at this moment, because I would like to dig into this evidence and consider it carefully.

Q. In estimating the amount and the cost of the service pipes, did you consider that these pipes were to run directly to the houses?

A. Yes, sir. Not in that estimate; no, sir.

Q. In this estimate?

A. Not that estimate; that is only a part of the service pipe on the public highway.

Q. To the building line?

A. To the building line; yes, sir.

Mr. Deegan: I think that is all.

Deputy Commissioner Glennon: Call the next witness.

Mr. Hazleton: I have just one question.

[fol. 286] By Mr. Hazleton:

Q. Mr. White, the Woodhaven Gas Light Company, as it is now constituted, represents how many miles of pipe?

A. At July 1st, I think I testified to——

Q. 95.5?

A. 96, something.

Q. This estimate as you gave it for installing gas to the section described upon your map would include 55.72 miles?

A. Yes, sir.

Q. And the pipe of the Woodhaven Gas Light Company, which constitutes over 96 miles of pipe, represents an investment of \$500,000?

A. You got me there. I do not know what it represents as an investment. I could not say. I did not memorize the figures.

Mr. Hazleton: That is all.

Mr. Dykman: I will ask Mr. McGowan to take the stand.

HENRY E. MCGOWAN, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Dykman:

Q. Mr. McGowan, what is your occupation?

A. I am Secretary of the company.

Q. Of what company?

A. Of the Woodhaven Gas Light Company.

Q. What other companies?

A. I am Secretary of the Brooklyn Union Gas Company and the

other subsidiary companies of the Brooklyn Union Gas Company.

Q. How long have you been connected with these companies?

[fol. 287] A. I came with the Brooklyn Union Gas Company in 1897, or 1898, I do not recollect exactly. I came as an electrical engineer with them and continued until 1903 when I went to the Flatbush Gas Company as General Manager and had general charge of the affairs of that company, in both its gas business and electric business. In 1915 I was elected Assistant Secretary of the Brooklyn Union Gas Company and the subsidiary companies, and still retain the title of General Manager of the Flatbush Gas Company. In 1917 I was elected Secretary of the Brooklyn Union Gas Company, and subsidiary companies, and am still in that capacity.

Q. Will you tell the Commissioner, generally, what your duties are, and your familiarity with the affairs of the Woodhaven Gas Light Company, both expenditures and income, etc.?

A. My duties are the general duties of a Secretary. I have charge of the seal of the company, and affix it and attest it, etc. I also have access to the books, and have been actively engaged in all rate cases that our companies have had at any time. The Flatbush Gas Company case was carried on seven years, and I was actively engaged in it all the way, having to do not only the mechanical end of the business, but also the clerical end of it.

Q. Have you prepared, Mr. McGowan, from the information at your disposal, the books, a statement of revenue and operating expenses for the year 1918, and the estimated result had 982 additional consumers in the Springfield territory been supplied?

A. Yes.

Q. Is that your statement (handing paper to witness)?

A. Yes; that is mine.

Mr. Dykman: I offer this in evidence.

Deputy Commissioner Glennon: If there is no objection, it will be received.

[fol. 288] Mr. Deegan: No objection.

Mr. Hazleton: No objection.

The paper was received in evidence and marked Company's Exhibit No. 15 of this date.

By Mr. Dykman:

Q. Will you explain that tabulation to the Commissioner, Mr. McGowan? I think it would be quicker than if I asked you questions about it. I will show you the original, sir. (Handing paper to Commissioner.) Will you tell us how you made it?

A. This is a tabulation of the revenue and expenses of the company for the year 1918, as it appears in the report of the company filed with the Public Service Commission for the year 1918.

In the second column I have endeavored to show the effect of the addition of 982 consumers. And the last column would show the effect on the total business of the addition of the 982 consumers.

The sales per consumer, the annual sales per consumer in the

Woodhaven territory in 1918 was 27,300 cubic feet. So the first figure appearing in the second column, 26,808,600 cubic feet is obtained by multiplying 27,300 cubic feet by 982 consumers.

This would be the estimated sales in cubic feet to those consumers.

The next figure under "Operating Revenue," \$25,468.17, is the first figure of 26,808,600 cubic feet, multiplied by the 95 cents, the revenue of the company.

The expenses are obtained by figuring the expenses of 1918 on a unit basis per thousand sold and multiplying the sales in cubic feet, 26,808,600 by those units.

[fol. 289] The "Uncollectible Bills" are obtained by the same method.

The taxes given here are \$16,221.28.

By Deputy Commissioner Glennon:

Q. What are the uncollectible bills?

A. Those are bills——

Q. Bills that people are not going to pay?

A. We presume that; it is in the same proportion in the whole territory. We think it but fair to look at it in that way.

Under the heading "Taxes," \$16,221.28 we have assumed, that the annual franchise tax would be increased, due to the taking on of this business, and as a basis for those taxes, we have taken the value as given by Mr. White for mains and services only, and applied to that the tax rate in Kings County for 1918, which was 2.41.

Under the heading of "Rent" \$600. We rather thought if the territory was supplied that the distance from our office in Woodhaven was so great, and from what I hear, although I do not know that to be a fact, I think the transportation facilities are none too good, it might be a hardship on the people to come that distance to pay their bills and transact business, and we simply put this \$600 in as a rental of office that might have to be put down there.

Deputy Commissioner Glennon: Could you rent an office down there for \$600?

Mr. Hazleton: I pay my bills in Jamaica and I live in Hollis, and that is no further. That is ridiculous.

The Witness: I am speaking of those who are not fortunate enough to have a bank account. There are a great many people who are not so fortunate.

[fol. 289a] Mr. Hazleton: I do not pay my bills by check, always, either.

Mr. Dykman: This is all subject to cross-examination, of course, Mr. Commissioner?

By Deputy Commissioner Glennon:

Q. How much did you pay for the Woodhaven to the Brooklyn Union for gas?

A. The Woodhaven pays the Brooklyn Union Gas Company 65 cents a thousand for the gas which it purchases, and that price has

been in effect since January 1, 1919. In 1918 the price was 50 cents per thousand, and I have put on this sheet an estimate of the increase in the cost had the price been 65 cents in 1918, as it is now.

Q. What is the actual cost of making gas per thousand feet?

A. That is out of my office.

Mr. Dykman: That will be taken up, sir, by another witness. The case will not lack any of its completeness.

By Mr. Dykman:

Q. What is the total of the tabulation shown for 1918?

A. It shows the operating income was \$37,999.19. That is not net income, because from that must be taken about \$7,000 of interest deductions. There would be a loss on the Woodhaven business of \$11,127.12, and an operating income on the total business of \$26,872.07. Had the gas been sold at 65 cents instead of 50 cents, there would have been a loss of \$24,124.75 on the business as it stood in 1918; on the Woodhaven business, \$15,507.91, and on the total business \$39,632.66.

[fol. 289b] By Deputy Commissioner Glennon:

Q. Is the stock of the Woodhaven Gas Light Company owned by the Brooklyn Union Gas Company?

A. Yes, sir; \$20,000.

Q. And the Brooklyn Union is also the office of the Woodhaven Gas Light Company?

A. Yes, sir. It has no funded debt.

By Mr. Dykman:

Q. In that connection who is the President of the Woodhaven Gas Light Company?

A. Mr. E. R. Chapman, and the Treasurer of the Brooklyn Union Gas Company is the President of the Woodhaven Gas Light Company.

Q. I notice on this that you have put down the operating revenue, commercial, 95 cents, and there has been some discussion about the rate charged. Now, will you explain why you used the rate of 95 cents?

A. That is the only portion of the dollar that the company receives. The additional five cents was ordered impounded in the Bank of Long Island, and we hardly consider that belongs to us. We have recently been allowed by the Courts to remove that money, substituting our bond.

Deputy Commissioner Glennon: Yes, I am familiar with that.

Q. You have used this 95 cent figure so as to get something which is absolutely an exact figure?

A. Yes.

Deputy Commissioner Glennon: Yes, I understand.

Mr. Dykman: Of course, for calculation five cents can be used.

[fol. 290] By Mr Dykman:

Q. You have prepared a similar statement of revenue and operating expenses from the first of January, 1919, to the thirty-first of May, 1919, as it actually came in, and I ask you if this is it (handing paper to witness)?

A. Yes, sir.

Mr. Dykman: I offer that in evidence.

Deputy Commissioner Glennon: If there is no objection it will be received in evidence.

Mr. Hazleton: No objection.

Mr. Deegan: No objection.

The paper was received in evidence and marked Company's Exhibit No. 16 of this date.

By Deputy Commissioner Glennon:

Q. Did you say at the present time that the Brooklyn Union received 65 cents from the Woodhaven Gas Light Company?

A. Yes, sir.

Q. For all commercial purposes?

A. Yes, sir.

By Mr. Dykman:

Q. Will you explain, Mr. McGowan, with reference to this Exhibit 16, as you did with reference to the previous one?

A. This is an exact statement taken from the general books of the company, showing operating conditions for the first five months of 1919. It shows the amount of gas purchased from the Brooklyn Union Gas Company, with the amount of gas sold to the consumers in Woodhaven. It shows the amount of money received from the gas sold, and the income per cubic foot of gas sold. It also shows [fol. 291] the operating expenses; the total operating expenses and the cost per thousand cubic feet of gas sold.

By Deputy Commissioner Glennon:

Q. When is the gas purchased paid for?

A. When it is paid for?

Q. Yes, sir; at the end of each month?

A. Every month; yes, sir.

Q. Did you also include in the gas sold all your outstanding accounts at the end of each month?

A. I do not think I understand the question.

Q. Under the heading of "Revenue from Gas Sold," you have the figure \$150,380.49; what does that represent? Does it represent money collected for gas?

A. No, those are bills as rendered. There may be deductions later on for gas bills not paid.

By Mr. Dykman:

Q. Instead of "Gas Sold" on this tabulation you might call that gas delivered?

A. Yes.

Q. To be accurate?

A. Yes.

Q. What does this tabulation show finally, Mr. McGowan?

A. It shows that in the first five months of 1919 the company lost \$13,793.97, which was at the rate of .0871 cents.

Q. Does this tabulation include any amount as a fair return on the property used for the benefit of the consumer?

A. Oh, no.

Q. Mr. McGowan, you have also made a statement on "Revenue and Operating Expenses," from January 1, 1919, to May 31, 1919, with the estimated result had 982 additional consumers in the Springfield territory been supplied. I show you this and ask you if that is such a statement (handing paper to witness)?

A. That is it.

[fol. 292] Mr. Dykman: I offer that in evidence.

Deputy Commissioner Glennon: The same will be received if there is no objection.

Mr. Deegan: No objection.

The paper was received in evidence and marked Company's Exhibit No. 17 of this date.

By Deputy Commissioner Glennon:

Q. Would not the Woodhaven Gas Light Company have to manufacture the gas?

A. No, sir, I do not believe so; I believe not.

Q. How is the figure of 65 cents arrived at; upon what basis?

A. I know in a general way, but I understand somebody else is going to testify in regard to that.

Mr. Dykman: Yes.

By Mr. Dykman:

Q. This Exhibit No. 17, Mr. McGowan, will you proceed and explain it in the same way that you did the others?

A. That is made up along the same lines that No. 15 is made up.

Q. That is, you have taken 16 and added to it a calculation similar to that which you added to the operating account for the year 1918, on 15?

A. No, I have not done that in that way.

Q. Will you explain what was done?

A. The first column shows the operating statement as taken from the general books of the company for the first five months of 1919, and the second column has been figured the same as the second column on Exhibit 15. For example, the sales in the Woodhaven Gas

[fol. 293] Light territory for the first five months of 1919 were 11,057 cubic feet per consumer, so that for 982 consumers the sales in cubic feet would have been 10,857,974 cubic feet.

Deputy Commissioner Glennon: Is that for the benefit of the Commissioner, or the benefit of the record?

Mr. Dykman: The benefit of the Commissioner, and the record, are, I suppose, the same thing.

Deputy Commissioner Glennon: I understand this quite thoroughly, as explained by this witness in his testimony, and the Exhibit 16 offered in evidence.

Mr. Dykman: There is no need of going any further into it if the Commissioner understands it.

Deputy Commissioner Glennon: I think it is a very well prepared statement.

Cross-examination by Mr. Hazleton:

Q. Was the surplus of the Woodhaven Gas Light Company on December 31, 1918, \$211,576.85?

A. I do not recall the figure. If you will allow me to refer to the Public Service Commission's report, I will be glad to tell you.

Deputy Commissioner Glennon: Yes.

The Witness: The corporate surplus of the company, as of December 31, 1918, according to the Public Service Commission's report, was \$211,576.85.

Q. That is the Woodhaven Gas Light Company?

A. Yes, sir.

Q. And the total surplus of the three companies, the Jamaica, the [fol. 294] Richmond Hill and the Woodhaven Gas Light Company was \$496,927.87?

A. That may be so; I do not know.

Q. And the operating income of the Woodhaven Gas Light Company for the year 1918 was \$37,999.19?

A. Yes, sir.

Q. And with the estimated cost for 982 consumers in the Springfield section, there still would have been an operating income of \$26,872.07 for the Woodhaven Gas Light Company; is that right?

A. According to the exhibit.

Q. According to your estimate?

A. Yes, sir.

Q. But the Brooklyn Union Company, the holding company, increased the price of gas 15 cents a thousand?

A. Yes sir, on the 1st of January, 1919.

Q. And that caused an additional expense of \$66,504.73, did it not, taking into consideration also the estimated cost for the addition to Springfield and St. Albans?

A. That is according to the estimate.

Q. If it had not been for that increase in cost per thousand, which was demanded and received by the Brooklyn Union Gas Company, the holding company, there would not have been any loss?

A. You understand that this is a speculation, so far as 1918 is concerned; the price was 50 cents during the year 1918, and was only increased to 65 cents on January 1, 1919.

Q. You are saying what it would have been if the cost had been increased 15 cents during the year 1918?

A. That is what the exhibit shows. The exhibit says that.

Q. But if there had been—as a matter of fact, there was no real loss during the year 1918, was there?

A. No.

Q. Even if you took into consideration the estimated additional [fol. 295] cost of leading the gas into Springfield, and the surrounding sections, and supplying it to the additional 982 consumers?

A. No.

Q. Of course, the company that secured this increase of 15 cents per thousand feet, which brought about the loss to the other companies, or rather, to the Woodhaven Gas Light Company, that company owns the entire stock of the Woodhaven Gas Light Company, does it not?

A. It does.

Q. So the profit or loss of the Woodhaven Gas Light Company, as a matter of fact, would eventually be chargeable to the Brooklyn Union Gas Company; is that right?

A. I suppose so, certainly.

Q. So then what really brought about more than anything else your estimated loss of the Woodhaven Gas Light Company was the profit which the Brooklyn Union Gas Company, or the addition in price which the Brooklyn Union Gas Company demanded for its gas per thousand feet?

Mr. Dykman: I object to that.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: It is not showing the matter properly; it does not state the subject fairly to the company.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: I respectfully except. He has not stated a fair question.

A. It has no effect. It has no effect on the compilation of this sheet. I am merely trying to show what would have been the effect if the price had been 15 cents more.

[fol. 296] By Mr. Hazleton:

Q. But if the Brooklyn Union Gas Company had continued the price as it was, or would continue the price as it was, you could not estimate any loss for the Woodhaven Gas Light Company; is that right?

Deputy Commissioner Glennon: I think he has already testified to that. He said no.

Mr. Dykman: These questions to which I object are different from the exhibit which shows a loss at the old rate.

Deputy Commissioner Glennon: He is cross-examining the witness.

Mr. Dykman: Still, Mr. Commissioner, he must quote the questions fairly, as you very well know. He must quote the answers and prior testimony, sir.

Deputy Commissioner Glennon: Go ahead with the cross-examination.

By Deputy Commissioner Glennon:

Q. What was the Woodhaven Gas Light Company paying the Brooklyn Union in 1918?

A. 50 cents per thousand.

Q. Is your estimate based on 50 cents a thousand in 1918, or the charge of 65 cents a thousand in 1918?

A. It first shows the business as it actually was, 50 cents per thousand being paid for the gas, and just below it shows the change in the operating expense, which would only have been in the cost of gas had the price been 65 cents, instead of 50.

Deputy Commissioner Glennon: Do you understand that?

Mr. Hazleton: Yes.

[fol. 297] Deputy Commissioner Glennon: Pass on to the next point, whatever it is.

By Mr. Hazleton:

Q. You have also submitted here what the condition of the company is, or was at the end of May 31, 1919, the Woodhaven Gas Light Company?

A. Yes, sir; the first five months of 1919.

Deputy Commissioner Glennon: That is Company's Exhibit No. 16, is it not?

Mr. Hazleton: Yes.

Q. Assuming that the price of gas had not been increased 15 cents per thousand feet by the Brooklyn Union Gas Company, what would have been the condition of the Woodhaven Gas Light Company at the end of May 31, 1919?

A. I cannot answer that.

Deputy Commissioner Glennon: That is a matter of mathematical computation.

The Witness: That is a matter of mathematical computation.

By Mr. Hazleton:

Q. There would not have been a loss, you can safely say that, can you not?

Deputy Commissioner Glennon: We can take those pages and go over them ourselves.

Mr. Hazleton: I know, Mr. Commissioner, but you would ordinarily ask that question yourself.

Deputy Commissioner Glennon: Under the circumstances, the witness [fol. 298] has no papers at hand to figure out the answer for you, and we can readily do that.

Mr. Hazleton: Yes, I know, but I have got to make out my case.

The Witness: I think there would be a loss of about three cents.

Mr. Deegan: Three cents?

The Witness: Three cents per thousand cubic feet; yes, sir.

By Mr. Hazleton:

Q. You say that there would be a loss of three cents?

A. Yes; I show the income from gas sold as 95.17. Now, I cannot do that; it is too much of a speculation.

Q. In taking your estimated addition of 982 consumers, you took as the territory the territory described by the gas company, in Exhibit No. 11, or map, did you not?

A. Yes.

Q. But do you understand that Mr. White in making that estimate for that territory took into consideration the facts of supplying 1,391 houses?

A. Yes.

Q. But you take into consideration only the part of the consumers mentioned here by the Committee on the first day; that is 982, did you not?

A. Yes.

Q. And you also include in your estimate the sections of Jamaica Gardens, Bay View Landing, and Idlewild Park, did you not?

A. Yes, sir.

Q. And you do not know the sections as described by the Committee in the maps which they introduced in evidence here?

A. No.

Q. In making your estimate here, you also included gas loss, did you not?

A. In what way do you mean I have included gas loss?

[fol. 299] Q. You have taken that into consideration, have you not?

A. Yes, sir.

Q. What did you allow for gas loss?

A. A charge of 8 per cent.

Q. On the total amount of gas supplied?

A. Purchased; Yes, sir.

Q. Do you know how much was supplied to the Woodhaven Gas Light Company?

Deputy Commissioner Glennon: In 1918?

Mr. Hazleton: Yes, sir, in 1918.

Deputy Commissioner Glennon: Does that exhibit show that? That is shown on the exhibit, is it not?

Mr. Dykman: Yes, sir; I think it is. That is shown on Exhibit No. 15, I think.

Mr. Hazleton: \$414,159.63.

Mr. Dykman: You are not reading from our exhibit, are you?

Mr. Hazleton: I am reading from an exact copy of the report.

Mr. Dykman: The exhibit?

Deputy Commissioner Glennon: You have the exhibit there, have you not?

Mr. Hazleton: Yes, it has been made, a copy of the report of the Public Service Commission, for my own convenience.

The Witness: Whatever is in the Public Service Commission report is correct.

By Mr. Hazleton:

Q. How did you arrive at that 8 per cent of loss?

A. You divide the sales through the consumers' meters by 92.

Q. What is the reason for that?

A. That is to figure the rate, and to find that figure, which, if [fol. 300] 8 per cent is deducted from it, will leave you the sales.

Q. That loss of 8 per cent is not based on anything exact, is it?

A. That is based on the experience of the company in dealings with various companies.

Q. But you could not give any exact figures in support of it, could you?

A. Personally, I could not, but it is a matter of record of various companies throughout the country as to what their losses are, and I believe that this is a reasonable estimate of what the loss would be.

Q. In estimating the increase of special franchise tax, you set down some \$673,082.20; how did you arrive at that?

A. That is the total cost as given by Mr. White for mains, meters and services, less the cost of the meters.

Q. Less the cost of the meters?

A. Yes, sir.

Q. And that, of course, is based on gas being led into the sections described here in Company's Exhibit No. 11, the maps which Mr. White has testified to?

A. Yes, sir.

Q. In your estimate, you do not want to insist on including an item of \$600 for rent, do you? You are acquainted with that section out there.

A. I simply told you why we had to put that in.

Q. You simply put that in to run up the amount, did you not?

A. No, not at all. There were other things which might easily have been put in, and might have been put in, but the column is speculative.

Deputy Commissioner Glennon: It is a rather small item, anyway.

Mr. Hazleton: Yes, your Honor, I know, but it is indicative of all of them, I think.

[fol. 301] Mr. Dykman: It is indicative of some of your questions, also.

Mr. Hazleton: That is all for the present.

By Mr. Dykman:

Q. Will you look at your calculation on Exhibit No. 15? Is the second column figured at the rate of 50 cents to the Brooklyn Union, or 65 cents?

A. 50 cents.

Q. And at the end there is operating income of \$11,127.12; is that loss or gain?

A. That is loss.

Q. So that, according to your calculation, if the price had been maintained at 50 cents, the addition of these consumers would have resulted in a loss?

A. In the particular 982 consumers in the Springfield section, that would have shown a loss, and that loss would have reduced the income of the company as it was \$37,999.19 to \$26,872.70.

Q. So if the rate had remained at the same, at 50 cents, there would have been a loss on these additional consumers by your calculation based on 1918?

Mr. Hazleton: That is very evident.

A. There would have been the loss indicated.

Q. I think there was some misapprehension from one of your answers. I want to clear it up. Suppose, instead of 982 consumers, you had given the number up to 1,391; what would that have resulted in, in your opinion?

A. The more consumers, the more loss there is.

Q. So the additional consumers over 982 would increase the loss?

A. Yes.

Q. You were questioned about an 8 per cent allowance for gas loss in transmission; do you know of any authority for that emanating from this Commission?

A. No, except that the Commission has been aware of that ever since it started, I believe.

Q. Are you familiar with the Commissioner's opinion in the Woodhaven rate case?

A. I have read it.

Q. Do you recall any statement in that opinion concerning allowance for gas loss?

A. I know it made an allowance.

Q. You do not know what it was?

A. I do not recall it.

Mr. Deegan: Have you got it there? You can read it in.

Mr. Crummey: It was 8 per cent.

Deputy Commissioner Glennon: How long will the next witness take?

Mr. Dykman: Only about one or two questions.

Mr. Deegan: I do not want to cross-examine this witness now, but I want an opportunity to go over this with our experts, and then I may have quite a number of questions on that, and I think I can gain time in that way, rather than by asking the questions now.

Deputy Commissioner Glennon: All right. Call the next witness.

Mr. Hazleton: I have a few more questions I would like to ask the witness.

By Mr. Hazleton:

Q. Assuming that 65 cents per thousand was asked by the Brooklyn Union Gas Company for gas furnished, would you say that during the year 1918, and including in your answer the supplying [fol. 303] of gas to the 982 additional consumers, would you say that the Brooklyn Union Gas Company would have suffered a loss?

Mr. Dykman: I object to that as improper.

Question read by the stenographer.

Deputy Commissioner Glennon: Do you think he understands the question?

Mr. Hazleton: Yes, I think that question is entirely understandable.

The Witness: I do not know, because that would depend on what it cost the Brooklyn Union Gas Company to supply that gas sold at 65 cents.

Q. You know nothing about that, then?

A. No.

Q. Is the Brooklyn Union Gas Company losing money now?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial, and not covered by this inquiry.

Deputy Commissioner Glennon: What do you mean; are they losing money?

Q. Has the Brooklyn Union Gas Company, for the year 1918, to be exact, operated at a loss?

Mr. Dykman: I object to it. I renew my objection.

Deputy Commissioner Glennon: That is, in regard to supplying gas to the Woodhaven Gas Light Company?

Mr. Hazleton: In general, I think I will supply.

Deputy Commissioner Glennon: Objection overruled.

[fol. 304] Mr. Dykman: I respectfully except and urge upon the Commission that the question is highly improper in this proceeding. The Brooklyn Union Gas Company is not a party to this proceeding.

Deputy Commissioner Glennon: My ruling may be wrong.

Mr. Dykman: I know you want to rule fairly, but I understand I am entitled to a little argument on that question. I cannot see how that has any relevancy.

Q. Has it?

A. I cannot answer the question.

Q. Has the Brooklyn Union Gas Company operated at a loss for the five months from January 1, 1919, to May 31, 1919?

Mr. Dykman: The same objection.

Deputy Commissioner Glennon: The same ruling.

Mr. Dykman: Exception.

A. I cannot answer that question.

Q. You are the Secretary of the company?

A. Yes, sir.

Q. Could you answer that question later?

A. The way—

Q. Just answer the question, yes or no; could you?

A. It all depends on what you mean by profit.

Q. I mean the same as you do in your statement in arriving at the loss of the Woodhaven Gas Light Company.

A. Oh, yes; I can answer that question. Not now.

Deputy Commissioner Glennon: It is a rather big question, as a matter of fact, is it not?

The Witness: Yes.

[fol. 305] Q. Did the Brooklyn Union Gas Company operate at a loss in 1918 in supplying gas to the Woodhaven Gas Light Company?

Mr. Dykman: Same objection.

Deputy Commissioner Glennon: Same ruling.

Mr. Dykman. Exception.

A. I do not know.

Q. Did the Brooklyn Union Gas Company operate at a loss in furnishing gas to the Woodhaven Gas Light Company from January 1, 1919 to May 31, 1919?

A. I cannot answer that question.

Q. What investment does the Woodhaven Gas Light Company, as now constituted, represent?

A. I think a witness is to follow me who will be able to testify to that.

Mr. Dykman: I do not know whether he will or not.

Mr. Hazleton: He thinks so.

Mr. Dykman: I do not know.

Mr. Hazleton: That is all.

Deputy Commissioner Glennon: Call the next witness.

Mr. Dykman: Will Mr. Bush take the stand?

ROBERT W. BUSH, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Dykman:

Q. Where do you live, Mr. Bush?

A. 10 Monroe Place, Brooklyn.

[fol. 306] Q. Mr. Bush, how are you connected with the Brooklyn Union and the subsidiary companies and what is the history of that connection?

A. I am the Engineer of Manufacture for the Brooklyn Union Gas Company.

Q. And the subsidiary companies?

A. The subsidiary companies do not manufacture.

Q. Then you are connected only with the Brooklyn Union Gas Company?

A. That is right.

Q. How long have you been, Mr. Bush, and will you tell the Commissioner your experience in the business and the general nature of your duties?

A. I finished my college education at the Institute of Technology and graduated from Harvard College in the class of 1889, taking my degree at that time.

In the summer of 1889 I entered the service of the Boston Gas Light Company to learn the business right through. I was instructed by different eminent engineers, at that time, both in the process of manufacture and in distribution, laying of mains and services, and other branches of the business.

About a year later I was appointed Assistant Superintendent of the South Boston Company, and later Superintendent of that company. Later on I became Superintendent of the Commercial Point Station of the Boston Gas Light Company. In all, my service with the Boston Gas Light Company and the South Boston Gas Light Company extended to 1893. At that time I resigned and took the position of Superintendent of the Metropolitan Gas Light Company in Brooklyn. I served as Superintendent and later was promoted to Engineer of that company until the consolidation with the Brooklyn Union Gas Company in 1896.

[fol. 307] During my service with the Metropolitan Gas Company I had entire charge of manufacture and distribution, and made up the costs of the different works which came under my supervision.

After the consolidation, I was appointed as Engineer of the Metropolitan works until appointed Engineer of Manufacture of the Brooklyn Union Gas Company, which was about 1907.

Q. In that position what have you to do with coal and coke purchases?

A. I have general supervision of the manufacture of gas at the six different works of the Brooklyn Union Gas Company, the operations at the works and the——

Q. You buy the coal and coke, do you, Mr. Bush?

A. I obtain prices for coal and for coke.

Q. Are you familiar with the prices of oil?

A. Yes.

Q. And generally with the cost of labor of the company?

A. Yes, sir.

Mr. Dykman: As a preliminary, sir, to my next question, I want to state to the Commission that to save time, without conceding the correctness of his figures which are now under review in certiorari, I have taken the figures that Commissioner Hayward in Cases 1787 and 1807, which were the 4th Ward rate cases, the figures which

he found, and were approved by the Commission as a proper price to be paid the Brooklyn Union Gas Company by the 4th Ward companies. I am not authorized to concede their accuracy for any other purpose in any suit. I do not know whether this harangue is necessary, but I feel I ought to make it for my clients' possible good.

[fol. 308] I offer this, not to substantiate the rate of 65 cents charged by the Brooklyn Gas Company, which this witness is not prepared, I imagine to do at this time, but I offer it as evidence of the cost of the service by the company concerned in the case, the Woodhaven Gas Light Company.

By Mr. Dykman:

Q. Now, Mr. Bush, are you familiar with the opinion of Commissioner Hayward in those 4th Ward cases, 1787 and 1807?

A. I have read the reports.

Q. This Commission found in 1916, in cases 1787 and 1807 that the reasonable price for the Woodhaven Gas Light Company to pay the Brooklyn Union Gas Company for gas was 44 cents per thousand cubic feet. To this the commission found that the Woodhaven Gas Light Company might add four cents per thousand cubic feet for gas loss in transmission, and that the distribution cost to the Woodhaven Gas Light Company was 32 cents; and to that the Commission added 13 cents for a fair return upon the property used by the company for the benefit of its consumers. This made a total of 93 cents. Taking only the items of coal, oil and gas production, labor at the works, which form a part of the cost of manufacture, as used by the Commission, what has been the increased cost per thousand feet of gas made for these items since May 27, 1916, which was the date as of which the Commission fixed its findings; have you prepared a tabulation of that?

A. I have.

Q. I show you this and ask you if it is such tabulation? (Handing paper to witness.)

A. Yes.

[fol. 309] Mr. Dykman: I offer this in evidence.

Mr. Deegan: No objection.

Deputy Commissioner Glennon: If there is no objection it will be marked.

Mr. Hazleton: No objection.

The paper was received in evidence and marked Company's Exhibit No. 18 of this date.

Mr. Dykman: Falling in line, sir, with your suggestion in connecting with the tabulation offered by the last witness, I shall ask no further question of this witness.

Deputy Commissioner Glennon: Is there any cross-examination at this time?

Mr. Hazleton: No cross-examination at this time.

Mr. Deegan: None now.

Deputy Commissioner Glennon: Mr. Deegan reserves the right to cross-examine the witness, is that what I understand you mean?

Mr. Deegan: Yes, sir.

Mr. Dykman: I have got one more witness who is an expert in capital investment, but he is not ready to proceed to-day.

Deputy Commissioner Glennon: When will he be ready to proceed?

Mr. Dykman: They tell me he wants at least a week or ten days.

Deputy Commissioner Glennon: What have you got to say with respect to that, Mr. Hazleton?

Mr. Hazleton: I am ready to go on right away. We will have some rebuttal.

Deputy Commissioner Glennon: There is one witness more, Mr. Dykman.

[fol. 310] Mr. Dykman: Yes, sir, this witness on capital investment.

Mr. Hazleton: I might introduce some rebuttal testimony as to the promise of extending gas into that territory, did I think that the Commissioner thinks it necessary. It is up to me to do what I think in proving my case. I could call every man down there to come here and give testimony if I wanted to put in everything.

Deputy Commissioner Glennon: To when do you want to adjourn this case?

Mr. Deegan: I think it will take our engineers eight or nine working days to properly check Exhibit 14 after they have received the detailed data from the company, and with these additional exhibits introduced to-day, the accountants will want some time. I favor an adjournment of about ten days.

Mr. Hazleton: I think the testimony that should be heard would be the testimony of the Commission's engineers.

Mr. Deegan: I want the company to complete its case first.

Mr. Dykman: Why cannot we adjourn the case without a day? We are not so far away but what we can get together when we are ready, and it might save the time of all of us having to come here on an adjourned date, in the event we were not ready to go on on that day.

Mr. Deegan: I do know, frequently, in checking up when the engineers state it will take them eight or nine working days to complete a piece of work, they have had to ask for further adjournments.

[fol. 311] Deputy Commissioner Glennon: It is satisfactory to you that the subsequent date for the next hearing be arranged by counsel for the Commission?

Mr. Hazleton: I think Mr. Deegan can best pass upon that.

Mr. Dykman: I think that will be satisfactory.

Deputy Commissioner Glennon: We will adjourn the case subject to call.

Whereupon, at 1.00 o'clock P. M. on the 22nd day of July, 1919, the hearing in the above entitled matter was adjourned subject to call.

STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Further Hearing Order in Case No. 2376

Before Hon. Edward J. Glennon, Deputy Commissioner

New York, December 19, 1919.

Met pursuant to notice at 10:30 o'clock A. M.

[fol. 312] Appearances: E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District; Messrs. Cullen & Dykman, appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. Crummev, Esq., of Counsel); Edgar F. Hazleton, Esq., Post Office Building, Fulton Street, Jamaica, New York, appearing for the Citizens Central Gas Committee of the Fourth Ward of the Borough of Queens; Messrs. Aron & Wise, 50 Pine Street, New York City, appearing for Hathon Homes Corporation and the Land Credit Corporation (by J. H. O'Connell, Esq., of Counsel); Victor M. Berthold, Esq., Belmont Street, Laurelton; Joseph Lachner, Esq., Davison Avenue, Springfield; Rev. Father John Tiney, Springfield; P. J. Reilly, Esq., Whitefield Gardens; Anne M. Molter, Clifford Avenue, Sheffield Manor.

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains in Springfield, Laurelton and other localities. (Further Hearing.)

Mr. Deegan: Ready.

Mr. Dykman: Ready.

Mr. Deegan: Mr. White, will you please take the stand?

JOHN T. WHITE, recalled as a witness, having been previously duly sworn, testified further as follows:

Cross-examination by Mr. Deegan:

Q. Mr. White, in response to my request at the last session in this case you have sent me this statement showing the amount of pipe received and used in the Fourth Ward, Borough of Queens, which pipe was ordered in October, 1916?

A. I did.

Mr. Deegan: I offer that in evidence.

The paper was received in evidence and marked Commission's Exhibit No. 19 of this date.

Q. I also asked you to let me have the survey which you had made to supply gas to those sections as estimated by you in 1915? Is that the survey? (Handing paper to witness.)

A. I should say that is part of it.

[fol. 314] Q. Is this the rest of it? (Handing paper to witness.)

A. It is.

Mr. Deegan: I would like to offer those in evidence as one exhibit.

The same were received in evidence and marked Commission's Exhibit No. 20 of this date, consisting of 2 sheets.

Q. At the present time the Woodhaven Gas Light Company has one 12 inch main terminating at Platt Street, Cedar Manor, and two six inch mains?

A. Yes, sir.

Q. Do those mains go all the way back to the works or the holder at Jamaica?

A. The two six inch mains which you mentioned are part of the distribution gridiron system in that section. The 12 inch main continues back to the station. About Cedar Street it is enlarged into a 16 inch main until it strikes the station. That is my recollection.

Q. At the present time are you using those three mains, the one 12 inch and the two 6 inch mains?

A. Yes, sir.

Q. If an extension is constructed into Springfield, and those other localities, as I understood from your testimony at the last hearing, you propose to strip the distribution mains, connecting with the 12 inch, so as to use the 12 inch main as a transmission main?

A. Yes, sir; that is correct.

Q. So that at the present time it is fair to say all of these three mains are not needed to supply the territory which they now serve?

A. No, it is not fair to say that. We shall have to substitute a line for the 12 inch, and reinforce the connections on what we call the Cedar Manor Section, once we strip that main and take it from the duty it is now performing.

[fol. 315] Q. But what capacity have those two 6 inch mains?

A. They have a capacity to supply the consumption requirements which they may be put to at the present time, and of course, allow for some future growth.

Q. So could not you from those two 6 inch mains, supply the present territory, without having this 12 inch main?

A. We might at this time, but not for long.

Q. But it would, as I understand it, take care of some of the future growth?

A. For a very short time, yes.

Q. Can you give us an idea of how many additional consumers these two 6 inch mains would at the present time take care of in the future?

A. I would not venture to say.

Q. Twice as many as it is now doing?

A. I would not care to say. It is according to the location of the

consumers along the line. As you get near Platt Street, you have a pressure drop, and in the future development grew nearer the end of the line, why, two 6 inch mains would become inadequate in less time than if developments occurred in the upper part, nearer the station.

Q. Of course, in laying out your transmission and distribution system to supply Springfield and the other localities, you took into account the future requirements?

A. Yes, sir.

Q. I asked you at the last hearing whether you could tell us how many additional consumers would be taken care of over the present number of houses in that section, taking 1,391 as the number; you were not able to give me any definite answer. Have you considered that proposition since that time, and can you state more definitely now than then the number of additional consumers that [fol. 316] could be provided for under your plan?

A. Well, I should say that the normal growth of the place for the next five years would be served, at least, but inasmuch as the character of the neighborhood is not fully developed, and we may have some manufacturing spots throughout the neighborhood, why, that is somewhat of a wild guess, and I should not like to be nailed down precisely to that statement. It is wholly controlled by the nature of the growth in the future.

Q. Do you know the average number of consumers, per mile, of main, new served by the Woodhaven Gas Light Company?

A. I could not give you that from memory.

Mr. Dykman: Is not that a matter of mathematical calculation?

Q. The plan as laid out by you provides, of course, for this 12 inch transmission main to Springfield to the governor pit at that point, and from there gas would be distributed throughout the entire section?

A. Yes, sir.

Q. If it was proposed to serve only Springfield, or Laurelton and Rosedale, would it be necessary to have provided for a 12 inch main?

Mr. Dykman: May I ask Mr. Deegan a question? You mean, as shown on the picture map, as we call it, with regard to that?

Mr. Deegan: With regard to Exhibit 11.

By Mr. Deegan:

Q. Would it have been necessary to provide a 12 inch main in order to adequately serve Rosedale and Springfield?

A. Having in view the future requirements, I should say so. [fol. 317]

Q. The future requirements of Springfield?

A. All the territory through which it goes.

Q. These territories lying along the transmission mains from Cedar Manor down to Springfield and Laurelton?

A. Yes, sir.

Q. And yet you propose not only to take care of Springfield,

Laurelton and intervening territory—by that I mean local territory, Locust Lawn, Locust Manor and South Jamaica Place—from that transmission Line, but also to serve St. Albans and Springfield Park, and Hickview Park; is not that right?

A. In short, we propose to serve the entire territory from that main through which the main goes.

Q. But my point is, would not a smaller main have been adequate, if you were only going to supply Springfield, Laurelton and the intervening territory from Cedar Manor?

A. Possibly I do not grasp your question the way you intend me to grasp it, but I think my answer to your question covers the ground.

Q. You still think a 12 inch main would have been necessary in order to properly supply Springfield, Laurelton, even though you did not intend to serve other localities?

A. No, I do not say that. I say a 12 inch main would be necessary to go through all the territory, for the future requirements of the adjacent settlements, or communities, that the 12 inch passes through.

Q. In all the outlying sections, like St. Albans?

A. All of them; yes, sir.

Q. In preparing this estimate as shown upon Exhibit 14, I understand that the cost of service was included at \$18.38?

Mr. Dykman: Does the witness know what you are referring to? [fol. 318] Mr. Deegan: That is Exhibit 14, which is your summary.

Mr. Dykman: I suggest that you show it to him.

Q. Your estimate, Exhibit No. 14, shows the cost of service as \$18.38. That I think you will probably have to get from your underlying data which you submitted to our engineer, but that is the figure they supplied me, which amount I assume is correct.

A. If that is the figure shown in my estimate, it is correct.

Q. Mr. Mitchell has just given me a copy of the data which you supplied in connection with the estimate. (Handing paper to witness.)

A. \$18.3815; yes, sir, that is right.

Mr. Dykman: Did you divide some figure there by another, Mr. Deegan?

Mr. Deegan: Have you got a copy of this one here? (Indicating.)

Mr. Dykman: I have not, no sir. You divided the cost by the total number of services?

Mr. Deegan: That is really what it is. I took the exact figure, because that figure had been given in Mr. White's underlying data.

By Mr. Deegan:

Q. What was the average length of service on which your estimate here was predicated?

A. From memory, I think 41 or 42 feet. May I look at my book for a moment? Then I can tell you.

Q. Yes.

A. (Witness consulting book.) The average length was 45 feet. [fol. 319] Q. That 45 feet included what; merely from the main to the property line, or from the main to the house?

A. No, it included from the main to the property line.

Q. How did you arrive at an average width of 45 feet?

A. From the result of working conditions over a period of years in that particular section in the installation of mains.

Q. Did you take it from the middle of the street?

A. No, the mains are located about 3 or 3½ feet from the curb. If you take the long and the shorts, and make the deduction of the position of the main from the curb line, with 30 feet for the roadway and about 15 feet for the sidewalk, which is generally the width that prevails down there in that particular section, you will find out from working practice that the average length of all service is 45 feet.

Q. Although the average width of the street is nearly 60 feet?

A. Yes, sir.

Q. I do not quite see how you can take an average of 45 feet when the average width of the street is 60.

Mr. Dykman: There are houses on both sides of the street.

The Witness: There are houses on both sides of the street, yes, sir.

Q. Will you look at your underlying data and give us the cost per meter, in making up your estimate? Just the average cost per meter?

A. The average cost per meter is \$14.9886.

Q. Does that figure include the cost price of the meter, and also the cost of installing?

A. Yes, sir.

[fol. 320] Q. So the cost of installing the meter has been included in the estimate of your necessary investment of \$693,000?

A. Yes, sir.

Q. Do you know whether the Woodhaven Gas Light Company includes in the operating expense the cost of installing the meters?

A. I know they do not—I beg your pardon—

Q. Whether the company does include in operating expenses the cost of installation?

A. Yes, sir.

Q. So here you are including in your estimate as part of capital investment an amount which would be included in the Company's operating expenses? Is not that right?

A. On the account of ascertaining what the cost of making the extension is, irrespective of any amount that comes on after the extension is made.

Mr. Deegan: That is all. Have you any questions, Mr. Hazleton?

Mr. Hazleton: I have not any questions.

By Mr. Dykman:

Q. Did I understand your testimony correctly, when Mr. Deegan was asking you questions about the capacity of the present mains,

for future development; when you speak of their capacity for such future development what territory have you in mind; the present territory, or some other territory?

A. I had in mind the particular territory he had under consideration at the moment, which is the real Cedar Manor.

Q. Which is the territory now served?

A. Which is the territory now served; yes.

Q. So that you considered their capacity for new houses in the territory now actually served?

A. On that actual territory; yes, sir.

[fol. 321] Q. Mr. White, when you made this plan, which is shown on Exhibit 11. I think it is, my recollection of your testimony indirect was that this was a lay-out proper, because it took into consideration the possible future development?

A. Quite true.

Q. And that it would be uneconomical, you might also say bad public policy to put in any other sort of lay-out?

A. That is so.

Q. And that is what you mean when you call such a lay-out necessary?

A. Yes, sir.

Q. This Exhibit No. 19, which has been put in evidence headed "Pipe Received and Used in Fourth Ward, Queens," this referred to the pipe stored at Jamaica, about which there has been considerable testimony?

A. Yes, sir.

Q. And this tabulation is an explanation, I take it, of the use made of pipe which went into that pile? I have not seen this before?

A. Yes, sir.

Q. So that all you have testified to hitherto is to the title in that pipe in the Jamaica pile, or the Jamaica dump, applies to the pipe shown in this tabulation, Exhibit No. 19?

A. Yes, sir.

Q. Have you anything to add to your testimony, in explanation of this tabulation, which you think would be useful to the Commission?

A. Nothing, except to state since that tabulation was made, at the request of Mr. Deegan, why, we have used up some of the small sizes, and there is less there now than indicated on the sheets.

Q. Will you be more specific, and tell us what sizes have been used up?

A. The 4, 6 and 8 inch cast-iron. If not used up, they are almost used up; a few remaining.

Q. As of what date was this tabulation made?

A. You will have to show me; I do not remember.

[fol. 322] Q. (Handing paper to witness.)

A. It was made in the early Spring, right after one of the hearings here, I think.

Q. Well, all I want to know is, does your testimony now bring it down to date, substantially?

A. This is July 1st, and my testimony brings it up to the 1st of October, or November 1st.

Q. This Exhibit No. 20, Mr. White, which has been placed in evidence by counsel to the Commission, and regarding which questions have been asked you, is, as I understand it, the 1915 survey?

A. Yes, sir.

Q. Can you state from your recollection, or do you want to see the exhibit, how many houses were under construction then?

A. There were two locally designated communities at that time in this survey, and, of course, a less number of houses. The houses as indicated on this paper you now hand me, are indicated as 669.

Mr. Dykman: If the Commissioner please, Mr. White has made certain new tabulations, which are material on the question of capital invested, and I assume it would save time if I went ahead with him now while he is on the stand. I mean the physical outlay installation of the company at the present time. No value, simply the amount of pipe in the street, and so on.

Mr. Deegan: As far as the present investment goes, I have a grave doubt whether this as a material and relevant question in a proceeding of this kind. If it is admissible in every extension case involving merely a cost of \$50 or \$100, a rate case ensues, and it does not seem to me that it ought to be taken into consideration in deciding [fol. 323] a proposition of this kind. I have not been able to find any definite law on the subject. There is some intimation in the decision of the United States Supreme Court in the Douglaston case, and that is the only case I know of in which the question may be said to be referred to.

This offer by Mr. Dykman, of course, as I understand it, is not to show any figures, any value; simply the amount.

Mr. Dykman: It is simply to lay the foundation.

Mr. Deegan: For going into the question of investment?

Mr. Dykman: As to the question of value.

Deputy Commissioner Glennon: I think you had better reserve that for the time being.

Mr. Dykman: Do I understand you to make an objection, Mr. Deegan?

Mr. Deegan: Yes, sir; I will make an objection, because I really think it is immaterial and irrelevant, and as the Commissioner suggests that he will reserve decision on it, I would like to go further into the question.

Mr. Dykman: Of course, this is a matter of very great importance to us. Before the decision in the Douglaston case, as I recall the Douglaston case, counsel for the gas company went upon the theory that the only relevant question was the return from the extension itself. The Supreme Court of the United States has rendered an opinion, which Mr. Deegan thinks leaves the question in some doubt, but still I know that the general opinion prevails that the capital [fol. 324] investment becomes very material, because there is an indication in the Douglaston case in order to defeat an extension,

the loss must be shown not absorbable by the earnings of the company from its general territory.

Mr. Deegan: In the Douglaston case, I recall the counsel for the gas company insisted that it was the burden of the Commission to show not only that the company would receive a fair return upon the new extension, but a fair return upon its entire investment, and the Commission took the position if the matter was relevant, the burden was upon the company, and it was in connection with that point when it was argued before the United States Supreme Court, that a reference was made to the fair return upon the entire value of the property, but the question was not in any way decided.

Deputy Commissioner Glennon: You can reserve that testimony for the time being, and let Mr. Deegan go ahead with his evidence. You can renew the offer afterwards, if you wish.

Mr. Deegan: I would also like to reserve my right.

Deputy Commissioner Glennon: Certain testimony which we adjourned for the purpose of putting on the record in this particular case; that is, we took an adjournment some time last summer and I understand that is ready, and counsel is ready with reference to that, and I would like to see that go in the record. You have it ready? [fol. 325] Mr. Deegan: Yes.

Deputy Commissioner Glennon: And afterwards we can take up those other questions.

Mr. Dykman: I should like to make for the purpose of the record—of course, it will be realized the importance of this case, to the company, and I should like to make, for the purpose of the record a formal offer of proof of this nature, tending to show the capital investment of the Company. I understand too that Mr. Deegan objects on the ground that it is incompetent, irrelevant and immaterial, and that the Commissioner reserves decision upon that point.

Deputy Commissioner Glennon: I would be inclined to overrule his objection.

Mr. Dykman: I should too, if I were in your place.

Mr. Deegan: I might also say, in that connection here, that this company has shown facts indicating an operating deficiency at the present time, and certainly, if it is not paying expenses, the question of the value of its property would be entirely unnecessary.

Deputy Commissioner Glennon: Mr. White, you will be excused for the time being.

Mr. Deegan: I want to ask him one more question.

By Mr. Deegan:

Q. You said that practically all this 4, 6 and 8 inch pipe had been used since this compilation was compiled?

A. Yes, sir.

[fol. 326] Q. For what purpose; for the purpose of the Woodhaven Gas Light Company, the Richmond Hill and Queens, and the Jamaica Gas Light Company?

A. Yes, sir.

Q. Do you know what proportion of it was used by the Woodhaven Gas Light Company?

A. I could not tell you off hand; no, sir.

By Mr. Dykman:

Q. Does not that show on the exhibit?

A. No.

Mr. Deegan: Mr. Hazleton would like to ask him a few questions.

By Mr. Hazleton:

Q. You say that when the present mains were laid, that you had in view as to the future service only that territory known as Cedar Manor, which is now served?

A. I said that, referring to the New York Avenue mains, and sections naturally on either side.

Q. Springfield would be served from those mains also, would it not?

A. After the main had been changed from the distribution lines to the transmission.

Q. When the New York Avenue main was laid, you knew that the franchise gave your company the right to serve gas into the sections beyond Cedar Manor, did you not?

A. Yes, sir.

Q. Did you not take into consideration at all the future service of those sections?

A. In our method——

Q. Never mind your method. Did you, or did you not?

A. I did not have to under our method of distribution.

[fol. 327] Q. Then you did not, did you?

A. I may have at the time; I do not remember. Under our method of distribution——

Q. Your answer is that you do not remember whether you did or not; is that right?

A. Yes, sir.

By Mr. Dykman:

Q. Will you supplement that testimony with what Mr. Hazleton did not allow you to say, if you have something in your mind?

Mr. Hazleton: If your Honor please, I do not see how that question is proper at all.

Deputy Commissioner Glennon: I think Mr. White is a rather capable witness. If he had anything to say, from my observations of him in the past, I do not think he would hesitate to say it.

By Deputy Commissioner Glennon:

Q. Is there anything additional you want to say with reference to the last answer?

A. I merely want to say that under our method of distribution we did not have to consider the requirements of outlying sections, by the fact of the elasticity of our method, and even though I know that there was a vast territory south of Platt Street, which is the place you refer to, I may, or may not have considered it at that time, but I knew when the time came, if the results justified the extensions, we would be amply prepared to make them.

Q. How long ago was that?

A. Six or seven years ago.

[fol. 328] By Mr. Hazleton:

Q. Then you say you understood and knew at that time that when the conditions in those territories, or sections, would call for the extension of gas into those sections, that your company would be amply prepared to make the extensions?

A. Yes, sir, I did.

Q. Then your reason for not making the extensions at the present time, the reason you desire to give is that the conditions existing in those territories do not call for that extension?

A. At this time they do not warrant it.

By Mr. Dykman:

Q. Any such other reasons as you have given in your testimony?

A. Precisely; yes, sir.

Mr. Deegan: Mr. McGowan, will you take the stand?

HENRY E. MCGOWAN, recalled as a witness, having been previously duly sworn, testified further as follows:

By Mr. Deegan:

Q. In preparing your statements of revenue and operating expenses for the year 1918, as shown on Exhibits 15 and 16, did you include in operating expense the cost of meter installation?

A. Yes.

Q. You included the cost of meter installation?

A. Yes, but not the cost of the meter itself.

Q. Of the installation?

A. Just the installation.

Mr. Hazleton: I have some questions I would like to ask, Mr. [fol. 329] Commissioner, but if you think I ought to defer them, I will be glad to do so. If you would rather have Mr. Deegan go ahead with his testimony, I will defer my questions.

Deputy Commissioner Glennon: If you wish to ask some questions, you can go ahead and do so. How long will it take you?

Mr. Hazleton: Just a couple of minutes. I only have a couple of questions to ask.

By Mr. Hazleton:

Q. What is the value of the property of the Brooklyn Union Gas Company?

Mr. Dykman: I object to that as incompetent, irrelevant and immaterial. The Brooklyn Union Gas Company is not a party to this proceeding. It seems to me to be a waste of time.

Deputy Commissioner Glennon: Objection sustained.

Mr. Hazleton: Exception.

Q. The Brooklyn Union Gas Company owns the entire stock of the Woodhaven Gas Light Company, does it not?

A. Yes, sir.

Q. What is the value of the property of the Woodhaven Gas Light Company?

Mr. Dykman: Another witness will testify to that. I do not think Mr. McGowan is in a position to answer it. If he can do so, well and good.

Mr. Deegan: Is not that the very question you reserved decision on?

Deputy Commissioner Glennon: That is the point we were discussing some time ago; that is ten or fifteen minutes ago.

[fol. 330] Q. Can you answer that question?

A. I can tell you the book value of the property.

Q. What I want is the real value of the property.

A. No, I cannot answer that. I have not made an appraisal of the property.

Q. What is the book value of the property of the Woodhaven Gas Light Company?

A. That is shown on the balance sheet (Referring to balance sheet.) According to the balance sheet as of December 31, 1918, as filed with the Public Service Commission, in the annual report, the total fixed capital, net investment, is \$584,697.88.

Q. And what is the capitalization?

A. By that you mean the outstanding securities?

Q. Yes.

A. \$20,000 common stock. There is no funded debt.

Q. Did you ever testify in your previous examination as to what, in your opinion, is the reason for the increase in the cost of maintaining the business of the Woodhaven Gas Light Company?

Mr. Dykman: I object to that question. The record shows what the witness testified to.

Deputy Commissioner Glennon: I do not think counsel has any record. If he can answer the question yes or no, he may do so.

By Deputy Commissioner Glennon:

Q. Did you, or did you not?

A. No, I did not.

By Mr. Hazleton:

Q. Could you state what in your opinion has been the reason for the cost of the increase of the business, of conducting the business of the Woodhaven Gas Light Company?

[fol. 331] Mr. Dykman: I object to that as highly improper cross-examination, and not being covered in the grounds of the complaint. The witness has not qualified.

Deputy Commissioner Glennon: The counsel is probably laboring under difficulties, because he has not had the minutes.

Mr. Dykman: He may make him his own witness, if he is not careful.

Deputy Commissioner Glennon: If he can answer the question he may do so. Can you answer the last question?

A. I know that the costs are increasing on account of the increased cost of labor and material.

Q. And that has been due to the conditions brought about by the war?

A. I do not know that the war has done it all. It is a fact that the costs of labor and material have increased.

Q. And the increase has particularly occurred during the year 1918-1919?

A. No, 1917 and 1918, and continuing in 1919.

Mr. Hazleton: That is all.

Mr. Dykman: I have a couple of tabulations, which will bring Mr. McGowan's previous testimony nearer down to date. It will only take a moment or two to put them in.

Deputy Commissioner Glennon: All right.

By Mr. Dykman:

Q. Mr. McGowan, in your previous testimony, as I recall it, you put in evidence a tabulation of the called statement of revenue and [fol. 332] operating expenses of the Woodhaven Gas Light Company, from January 1, 1919 to May 31, 1919?

A. I did.

Q. And at my request have you prepared a similar tabulation, similar as to items and details of revenue and operating expenses from January 1, 1919 to October 31, 1919?

A. I have.

Q. Is this it? (Handing paper to witness.)

A. Yes, sir.

Mr. Dykman: I offer it in evidence.

The paper was received in evidence and marked Company's Exhibit No. 21 of this date.

By Mr. Dykman:

Q. When you were on the stand before, we introduced in evidence, through you, a statement of revenue and operating expenses, during

the period from January 1, 1919, to May 31, 1919, and an estimated result had 982 additional consumers been added to the actual number of consumers during that time?

A. Yes, sir.

Q. Have you prepared a similar statement of revenue and operating expenses from January 1, 1919 to October 31, 1919, and the estimated result had 982 additional consumers in the Springfield territory been supplied?

A. Yes, sir.

Q. Is this the tabulation? (Handing paper to witness.)

A. It is.

Mr. Dykman: I offer it in evidence.

The paper was received in evidence and marked Company's Exhibit No. 22 of this date.

Q. Mr. McGowan, these two Exhibits Nos. 21 and 22 are, I understand, prepared in the same manner as to items and details as the previous exhibits covering the earlier period?

A. They are, sir. At that time, I went into great detail as to how they were prepared.

Mr. Dykman: Following the Commissioner's former suggestion, that these exhibits sufficiently speak for themselves, I will drop the witness here in order to save time. Would you like to see the exhibits?

Deputy Commissioner Glennon: No, not at this time. I will have an opportunity at a later date to examine them. They are marked in evidence.

Mr. Deegan: I would like to reserve my right to cross-examine on these, if I find that necessary.

Deputy Commissioner Glennon: All right.

Mr. Deegan: We have not any figures in the Commission's files for 1919, so it may be necessary for us to have those checked up.

Deputy Commissioner Glennon: That is perfectly proper; I do not suppose Mr. Dykman objects to that.

Mr. Dykman: Certainly not.

By Mr. Hazleton:

Q. Your contention is that due to the increased cost of labor and material that the company is not in a financial condition to make any of the extensions mentioned in this proceeding; is that right, Mr. McGowan?

A. My contention, I would hardly describe it in that way.

Q. Your belief?

A. It is a fact that the company is not making any money in the [fol. 334] gas it is now selling, and it is a very difficult thing to see why it is good business to extend still further to supply more gas on which you know you are not making any money.

Q. Have you any opinion as to when your company would be financially able; or when it would be financially profitable to your

company to make any of the extensions mentioned in this proceeding?

Mr. Dykman: That is purely conjectural.

Deputy Commissioner Glennon: Can you answer the question?

A. I can not tell when, but certainly, if you are making some money, the chances are much better.

Q. Do you expect that your company will ever be able to?

Mr. Dykman: That is quite argumentative.

A. We hope so.

Q. But you have no opinion as to when?

A. No, sir.

Q. Would a return of the price of labor and material to normal conditions put your company in a position to make all the extensions, in your opinion?

A. Anything that would tend——

Q. Yes or no?

A. (Continuing:) To reduce costs and enable you to make money, would.

Q. And, of course, a return of the cost of labor and material to the normal conditions would bring that about, in your opinion?

A. Whatever you mean by normal, I do not understand that. I think the present conditions are the normal conditions.

[fol. 335] Q. Then, you do not consider the present conditions, in so far as the cost of labor and material is concerned, as abnormal condition?

A. No.

Q. You consider the present conditions the normal conditions?

A. I think so.

Q. You expect the present condition to continue?

A. I do not see any reason why it should change.

Q. Do you not believe that the disturbing conditions brought about by the war and the present period of reconstruction has anything to do with the high price of labor and material?

Mr. Dykman: If the Commissioner please, I object to this as argumentative, improper cross-examination, and valuable only to the General Shorthand Reporting Company.

Mr. Hazleton: The last remark is very objectionable, and ordinarily an attorney who made such a statement would be shown his place. It is not a legal one, as your Honor can readily see.

Mr. Dykman: I press my objection.

Deputy Commissioner Glennon: Overruled. Can you answer the question?

(Question read by the stenographer.)

A. Yes, sir.

Q. Do you expect those disturbing conditions, which you have conceded by your answer to exist, to cease at any time?

A. I do not think that they will ever cease until people stop talking and rowing, and get back to good, solid work, and increase the production of things. When that may happen, goodness only knows; I do not.

Q. And increase the price they pay for things, incidentally gas?

[fol. 336] Mr. Dykman: Mr. Commissioner, this is so improper, may we not have relief from it?

Deputy Commissioner Glennon: I do not believe it makes much difference what this witness thinks may happen.

Q. What could you give us as a reason for believing that your company at any time would be able to make any of these extensions?

Mr. Dykman: I object to that as highly improper.

Deputy Commissioner Glennon: If the witness can answer, I will allow him to do so.

A. We are in hopes that the courts may see the financial embarrassment of the company, and that relief may come from that quarter.

Mr. Hazleton: That is all.

Mr. Deegan: I will call Mr. Mitchell.

Mr. Dykman: Do we understand exactly how we stand on this question of capital investment? Of course, we have not rested our case. I assume I have made a sufficient formal offer and statement of our readiness to prove the capital investment. If there is going to be some conference between counsel and the Commissioner, or between us, or something of that sort.

Deputy Commissioner Glennon: I have no intention to hold a conference with the counsel to the Commission on the question. The only idea I had in mind was to put in this testimony, and as soon as we were through with the men, permit them to go back to [fol. 337] their work. If you wish, you can renew your offer, as soon as we are through with the men. Mr. White will be here, will he not?

Mr. Dykman: Mr. White is going to be with the company——

Deputy Commissioner Glennon: I mean, Mr. White is going to be present with you on the hearing, and at subsequent hearings?

Mr. Dykman: There is no difficulty in getting Mr. White, or no difficulty, I hope, in getting our expert when we want him, but it is sufficiently clear that we have not closed our case, and that we are ready to prove the capital investment when convenient to the Commissioner to hear our evidence.

Mr. Deegan: If the Commissioner should finally decide that testimony as to the value of the present property given is relevant in this case, then it would seem to me, in order to shorten the proceeding, if counsel for the company would be willing to agree that the value of the property, as found by the Chief Gas Engineer of the Commission, in the former rate proceeding, with additions and retirements up to date, could be accepted as a minimum value of the

company, for the purpose of this proceeding, otherwise, it means the cost of having the company put on its experts, going through a long cross-examination, and then the Commission coming in and checking this up and putting in another appraisal. So the entire rate question, thrashed out in the rate cases, as to value of property, would have to be thrashed out again in this proceeding.

[fol. 338] Mr. Dykman: That is one of the prices of Mr. Du Bois' great victory in the United States Supreme Court, and I am afraid we cannot stipulate the value as they have in the other case. In the other case we procured a writ of certiorari and brought the proceeding to the Commission, who knocked it out by a suspension order.

Mr. Deegan: But they did not pass any further upon the question of value. They simply suggested that for the purpose of this case alone.

Mr. Dykman: It would be a very easy thing to do that on what we are getting then, but at the present time, I do not see how we can.

Mr. Deegan: Would not your main purpose be in offering proof as to the value of the property to show that it is not now and cannot at the present time make an adequate return?

Mr. Dykman: That would always be one of the purposes.

Mr. Deegan: Could not that purpose be shown by taking this minimum value, as fixed by the Commission in a former trial?

Mr. Dykman: I do not think so, technically, as I see it now, but I would like to make this suggestion: this is the first time this proposition has been made to me and it is possible that we may get together and make some arrangement as to a proof; I do not know. I may want to turn it down eventually, but I do not see my way clear to do so now.

[fol. 339] Deputy Commissioner Glennon: This is a matter you can discuss later on.

Mr. Dykman: This is a matter of compromise.

ROBERT H. MITCHELL, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Deegan:

Q. You are in the Commission's employ, Mr. Mitchell, are you not?

A. Yes, sir.

Q. What is your position?

A. Assistant Engineer in the Equipment Inspection Bureau of the Commission.

Q. How long have you been with the Commission?

A. Since September, 1908.

Q. Since that time, will you state briefly the duties which you have performed?

A. Since that time, almost continually, I have been engaged on the appraisal of utility properties, both gas and electric railways—

Deputy Commissioner Glennon: Do you concede his qualifications, Mr. Dykman?

Mr. Dykman: Yes. He is connected with the Commission, is he not?

Deputy Commissioner Glennon: Yes.

Mr. Dykman: I might as well challenge your Honor's qualifications.

Q. You have checked up the estimate prepared by Mr. White and marked Exhibit No. 14 in this case?

A. I have.

Q. Have you also prepared the other estimate shown upon this sheet?

A. I have prepared three separate studies.

[fol. 340] Q. Explain briefly what each study shows.

A. The first study shows the estimated cost to supply all the Districts as covered by the Gas Company's map and estimates as submitted by Mr. White for the company.

Q. That was Exhibit No. 11?

A. Yes, sir.

Q. The so-called picture map?

A. Yes.

Q. What does study No. 2 show?

A. Study No. 2 is based on the assumption that only the sections that were covered by the petitioners' map would be served, or as requested by the petitioners, as shown by the analysis of the testimony previously put in in this case.

Q. And in connection with that study, did you have a map prepared showing transmission and distribution mains?

A. They had a map showing just what sections the petitioners desired company's service, shown by the testimony in the case.

Q. Is this a copy of the map which you had prepared?

A. It is.

Q. What does study No. 3 show?

A. Study No. 3 shows an independent study, taking in only those sections which appear to be mostly apart, and which would show the greatest consumers per mile of mains, and that study includes service to the towns of St. Albans, Springfield, Locust Manor, Locust Lawn, South Jamaica Place, Rosedale, and Rosedale Terrace.

Q. In connection with the study, did you have any maps prepared showing the transmission and the distribution lines, location of the houses?

A. We had three of the small maps prepared, described as 3, 3-A, 3-B, which covers the towns previously mentioned.

[fol. 341] Q. Are these three Blue-print maps such maps?

A. They are.

Q. Have you any corrections to make of the figures as shown upon your study, as originally prepared?

Mr. Dykman: Is that the tabulation, Mr. Deegan?

Mr. Deegan: Yes, there are some corrections to be made.

A. In study No. 3, there were certain corrections and they are made in the computations as shown on this small sheet, showing the cost under the three different studies. It affects study No. 3. Study No. 3, the total amount shown as total cost to supply the towns mentioned, the figure appears as \$262,272.82. Due to changes this figure will become \$271,574.71. This will necessarily result in changes which affect the study of the mains running to Locust Manor, but I have purposely submitted a superseding exhibit which will clear those figures. The difference is an increase of approximately \$9,300, over and above the figure as shown in the present study under study No. 3.

Q. You have made the correction upon this blue-print copy?

A. I have.

Mr. Deegan: I offer it in evidence. The corrections on the other copies will be made later, and you will have a copy. And in conjunction with that, I would also like to offer all the maps as one exhibit.

The maps were received in evidence and marked Commission's Exhibit No. 23 of this date, consisting of five maps.

[fol. 342] By Mr. Deegan:

Q. Will you just state, for the record, Mr. Mitchell, the total cost as estimated by you under study No. 1, No. 2 and No. 3?

A. The totals under study No. 1, which cover the territory as figured on by the company, \$644,898.84; or an average cost per consumer of \$463.62.

The total cost as shown under study No. 2, which includes the petitioners' territory, as requested, was \$443,652.09, or an average cost per consumer of \$432.41.

Under study No. 3, or the independent study, prepared by the engineers of the Commission, a total is shown of \$271,574.71, or an average — per consumer of \$378.20.

I may say in connection with that study that the average cost per consumer refers to a foot-note, which is based upon the assumption that all houses and places of January 1, 1919 will be consumers. That study has necessarily had to be based on those promises, due to the conflicting testimony as regards the actual number of consumers which will take service in this district.

Q. Your estimated cost to construct was of what date?

A. As of approximately the same date that the company's figures were prepared, as of May, 1919.

Q. In preparing your estimate, Mr. Mitchell, did you take into account the future requirements of the company?

A. I did.

Q. So that you can say approximately how many additional consumers could be served by the lay-out as proposed by Mr. White, as shown on Exhibit No. 11, and as shown on your maps attached to this estimate?

A. Well, the layout of mains for this district would supply many [fol. 343] times the consumers, but the scope of my examination has not been to go in and ascertain at this time what the maximum number of consumers was which these present mains will supply.

Q. Do you know the number of consumers, per mile, of main now served by the Woodhaven Gas Light Company?

A. The Woodhaven Gas Light Company has 150 consumers, or thereabout, per mile of main in their present territory now operated.

Q. And the system as laid out here would show how many consumers per mile of main, taking the number of houses as now existing?

A. If my memory serves me correctly, I proceeded on the assumption that 80 per cent. of the total number of houses in this district will be actual consumers, and that the most favorable figure shows approximately in the neighborhood of 22 consumers per mile of main.

Q. That is the average?

A. That is the average, and the figures are not general, just according to my general recollection. That figure may vary 10 per cent. from the figures which I have given.

Q. In arriving at your estimate of the service pipes, what was the average length of pipe you took into account?

A. The average length of service of the pipe I figured on in these estimates was 30 feet, as representing the average length in the street; that is, from main to property line.

Mr. Deegan: Mr. Hazleton wishes to ask a question.

By Mr. Hazleton:

Q. From the point where the main line stops at Cedar Manor could any extension of the gas service into any of the sections mentioned in this proceeding be made without laying a new trunk line?

A. Yes, there are sections of Locust Lawn, Locust Manor and South Jamaica Place which could be fed by the extension of the present line now ending at New York Avenue and Platt Street.

Q. What would be the cost of that extension and the supplying of gas to those sections you have just mentioned?

A. To supply Locust Manor, Locust Lawn and South Jamaica Place would be approximately \$50,000.

Q. And then to go on and supply Springfield, or the section which is marked Springfield upon your various studies, Springfield, Laurelton, Rosedale Terrace and Rosedale, you would need a new trunk line installed; is that right?

A. Yes, sir.

Q. Then what would be the additional cost of supplying those sections?

A. I have not the figures available for Laurelton because they were not included in this independent study which I made in Study 3. We omitted the service to Laurelton.

Q. What would be the additional cost to supply Springfield, or the section marked Springfield upon your different studies?

A. That would depend upon whether you considered service to Springfield only.

Q. Yes, sir, I am.

A. I would have to refresh my memory on that. The figures cannot be derived from the exhibit placed in evidence, due to the fact that the cost of this transmission line in Study No. 3 has been distributed over all the localities that will be supplied from the governor at Springfield, on the basis of the number of houses in the relative sections in the different towns there.

Q. Could I help you if I asked you what would be the additional [fol. 345] cost to extend the service into Springfield, Rosedale Terrace and Rosedale; have you ascertained that?

A. We figured that would be about \$170,000. We figured that it would cost about \$170,000 to supply those three localities, Springfield, Rosedale and Rosedale Terrace, with the charge of the transmission line being against those three towns, and the transmission line cost would be approximately \$45,000 of that \$170,000.

Mr. Hazleton: That is all.

By Mr. Dykman:

Q. Mr. Mitchell, how did you get the consumers per mile; I did not understand that?

A. The consumers per mile of main, is virtually the cost per house per mile of main, assuming that the total number of consumers would equal the number of houses.

Q. You took the houses, then?

A. Yes.

Q. And you got the number of consumers and divided the number of miles by the number of houses?

A. Exactly, for the various localities.

By Deputy Commissioner Glennon:

Q. You said you estimated that 80 per cent. of the houses would use gas?

A. Yes, sir.

Q. Did you also use that in your computations?

A. In this study it is based simply on the number of houses.

Q. What is that exhibit number?

A. Exhibit No. 23. In the absence of knowing the actual number of consumers who would take service in this district, in arriving at the average cost to consumer, the figures were based not on the number of contemplated consumers, but upon the number of houses in [fol. 346] the respective localities of that Springfield district.

By Mr. Dykman:

Q. And then I suppose in the same way to get the number of consumers per mile you took your estimate of consumers and divided it into the number of miles of mains?

A. That is the number of houses.

Q. The number of houses into the number of miles of main?

A. Yes, sir.

Q. You spoke, Mr. Mitchell, of the average length of service; how wide are those roads?

A. Those roadways are of various widths throughout that territory; the width of the roadways vary throughout the district. There are some of them narrow lanes, and others would come up to the average 30 foot roadway, 30, 40 to 50 feet.

Q. Are you speaking now of the roads upon which a layout is shown, on Exhibit No. 11, as I recall it?

A. Yes, sir.

Q. Some of those are narrow, and some are wide; is that your recollection?

A. Yes, sir, and the figure used has been based upon an average. That average was obtained as a result of original computations made in the original Woodhaven territory by Mr. Hine, showing the number of feet of service pipe run over a period of years, and the number of feet of pipe actually paid for by the consumers.

As the result of analyzing those figures and comparing them with conditions as I found them in this district, I considered that the figures arrived at and used in that appraisal, allowing 30 feet for the average length of service pipe between main and property line, and [fol. 347] 15 feet between property line and building wall, could be considered as fairly representative of the present district which we were estimating upon.

Q. That is, you took Mr. Hines' estimate and then after a consideration of this territory in issue, decided that his estimate could be applied with propriety to this particular district?

A. Exactly.

Q. Did you put your main in any particular portion of the roadway when making that estimate?

A. We followed the general layout of the company, and we figured that on the curb, which is uncertain in a locality of this kind, that some mains would be taken off from one side of the street, and some from the other, and that computing or figuring the main as laying in the middle of the street, would represent a fair average to be considered in that it is uncertain now just the number of consumers that will be taken off from one side and the number that will be taken off from the other side.

Q. Mr. Mitchell, you were asked some questions about what I might call individual and particular extensions, Locust Lawn, I think was one, and Locust Manor, and South Jamaica Place. It seemed from your testimony as though you had made a study for those localities, independent of this Exhibit 23; is that the fact?

A. No; that is included.

Q. I know it is included, but I got the impression from your testimony that you had some tabulations with regard to particular communities which went in evidence. I am simply asking for information.

A. The question that arose there was what sections were fed direct, and not by use of the transmission line. There are three localities

[fol. 348] which are being fed direct, and those are Locust Lawn, Locust Manor and South Jamaica Place.

Q. You gave some figures for them; did you take them from this? (Indicating.) You were asked how much, as I recall it—I do not want to misquote or misrepresent the testimony—but as I recall it, you were asked how much it would cost to serve Locust Lawn, Locust Manor and South Jamaica, and my recollection is you said \$50,000?

A. Yes, sir.

Q. Was that taken from this? (Indicating.)

A. It could not be derived directly from that. It was based on sustaining details.

Q. You have sustaining details?

A. Yes.

Mr. Dykman: I assume there will be no more objection to our using his sustaining details than to you using ours?

Mr. Deegan: Not at all.

By Mr. Dykman:

Q. Mr. Mitchell, from your experience and knowledge of this subject, would you say that it would be proper to run a line to serve one of these particular communities far from the present end without taking care of future consumers in the interval?

A. I certainly would.

Q. You would consider, and is your testimony with respect to particular communities based upon the theory that it is proper to run a line, we will say, to Laurelton, as shown on this study No. 2, without providing such an installation as would take care of consumers in South Jamaica Place and Springfield?

A. Good engineering judgment requires that consideration should [fol. 349] be given to all intervening towns which would be necessary to run through in arriving at this point.

Q. I assumed you had done this. I misunderstood you. Good engineering judgment requires a consideration of future consumers in the interval?

A. Yes, sir.

Q. So in running a line to Rosedale, you would take into consideration Laurelton, Springfield and South Jamaica Place?

A. Yes, sir, and there is no use in stringing along those names; that would apply to any portion of those names. No, if one town should be supplied direct, such as Springfield, the cost per mile would naturally be high for that one locality, in view of the fact that you have to run a transmission line, and it would be considered very poor engineering judgment just to provide for the future requirements of that immediate district, without considering the intervening and surrounding territories. Because in the end, if such procedure were followed, the burden and the expense and the return on the investment would exceed in the final determination what it would be, provided you had originally undertaken to figure on an adequate size of main, which would take care of this Springfield district, or any other district so located, when running the new extension.

Q. It would be very economical?

A. Yes, sir.

Q. I notice you have left out Laurelton on your independent study. Did you by any chance know at the time you made that study that Dr. Berthold lived in Laurelton?

Mr. Deegan: I object to that as incompetent, irrelevant and immaterial.

Deputy Commissioner Glennon: Sustained.

[fol. 350] Mr. Dykman: If the Commissioner please, we are going to see some of these sustaining details, and I would like to make some analysis of these figures with our expert, and I assume that we might have Mr. Mitchell for five or ten minutes at some future time, if we want him?

Deputy Commissioner Glennon: Yes.

Mr. Dykman: The same arrangement that you have with our witnesses.

Mr. Deegan: Yes.

By Mr. Deegan:

Q. My attention has been called to the fact that in study No. 3, you do include a part of Laurelton; is that so?

A. No, there has been no main extension into Laurelton considered under study No. 3.

Mr. Dykman: That is all I have, with that reservation.

Deputy Commissioner Glennon: Are there any more witnesses?

Mr. Deegan: No, I do not think we care to put in anything more.

Mr. Hazleton: I just want to put on a witness to show the change in conditions, in so far as developments are concerned since the last hearing.

Deputy Commissioner Glennon: Yes, surely.

Mr. Hazleton: Mr. Schabehorn, will you take the stand, please?

[fol. 351] WILLIAM H. SCHABEHORN, recalled as a witness, having been previously duly sworn, testified further as follows:

By Mr. Hazleton:

Q. Mr. Schabehorn, have any new buildings been constructed in the sections mentioned in this proceeding since the last hearing?

A. Yes, sir.

Q. Some have been completed, and others are under course of construction?

A. Yes, sir.

Q. All together in the sections mentioned in this proceeding, could you state how many buildings have been completed and have been commenced since the last hearing in this matter?

A. Probably between 100 and 130 to 140.

Q. Did you construct any yourself?

A. Yes, sir.

Q. How many?

A. I have nine completed since the last hearing, and eight or nine foundations now dug.

Q. Where are they?

A. In Springfield.

Q. Have any new buildings been started in what is known as Laurelton in this proceeding?

A. Yes, sir.

Q. What has been started there?

A. There have been a number of apartment houses.

Q. How many apartment houses?

A. I believe three.

Q. Have any other buildings been started?

A. Yes, sir; there are a number of presumably one-family dwellings.

Q. How many would you say?

A. Probably in the neighborhood of fifteen to twenty.

Q. How many families do those apartment houses contain; how many apartments do they contain?

[fol. 352] A. I understand they contain four apartments. I want to make it perfectly clear that I am not absolutely conversant with Laurelton details. And what I saw is by riding through there in an automobile. I know that apartment houses are being built there, and are built, and I believe that they are to contain four apartments to each house.

Deputy Commissioner Glennon: Dr. Berthold says six.

The Witness: I will say six, then.

Deputy Commissioner Glennon: I guess Dr. Berthold knows.

The Witness: Yes, he would be the man to testify as to the Laurelton development.

Q. Have you seen the houses?

A. Yes, sir.

Q. Do you know what the value of those apartment houses are?

Mr. Dykman: I object to that.

Deputy Commissioner Glennon: He cannot testify to that; he does not even know how many apartments there are in the houses.

The Witness: All I can say is that they are renting for \$15 a room.

Mr. Dykman: I object to that.

The Witness: I am told that by a party who knows.

Mr. Dykman: I move to strike that out.

Deputy Commissioner Glennon: Motion granted.

Q. What is the value of the houses you started to build?

A. Some of them an average of \$4,500, and they run up to \$7,500.

[fol. 353] By Deputy Commissioner Glennon:

Q. Does that include the lot also?

A. Yes, sir.

By Mr. Hazleton:

Q. What would you say the average cost would be of the construction of the houses started since the last hearing here?

Mr. Dykman: I object to this. He has testified. I do not see how he can possibly now testify to something else. He testified that he knows the houses are there, having seen them when he drove through in an automobile. He testified he saw a certain number of houses when he drove through there in an automobile.

Deputy Commissioner Glennon: What houses are you referring to; the houses he has under construction?

Mr. Hazleton: No, he has already testified to that, your Honor.

Deputy Commissioner Glennon: He has testified that there are nine houses completed since the last hearing.

The Witness: My own houses.

Deputy Commissioner Glennon: And an additional nine or ten houses in the course of construction, the foundations started.

The Witness: My own houses.

By Deputy Commissioner Glennon:

Q. You are now testifying to the value of other houses in that immediate territory?

A. Yes, sir.

Q. You are not familiar with the houses in Laurelton, are you?

A. No.

[fol. 354] Q. You are not familiar with the value of the houses there, are you?

Q. What territories are you familiar with?

A. Springfield, particularly.

Q. How many new houses have been constructed in Springfield, or completed since the last hearing?

A. Absolutely built, I should say, probably 35 or 40.

Q. How many foundations?

A. How many foundations?

Q. Yes.

A. Well—

Q. About how many, if you know?

A. I should say 35 or 40 foundations.

Q. You can testify to the value of the houses in Springfield?

A. Yes, sir.

Deputy Commissioner Glennon: Is that what you are working on, the houses in Springfield?

Mr. Hazleton: Yes, your Honor, what were the average values.

Mr. Dykman: The witness has not been qualified.

Deputy Commissioner Glennon: I think he qualified at a previous hearing.

Mr. Dykman: May I make an objection. The value of the houses is incompetent, irrelevant and immaterial in this proceeding. Possibly the nature of the houses might be material as to how many families they are going to hold, showing how much gas they are going to consume, but I submit the mere fact that a man has a slate roof on his house, which might greatly increase the value of the house, that the construction of the house can bear absolutely no relation to the amount of gas to be consumed.

{fol. 354a} Deputy Commissioner Glennon: It might be an indication that he would be in a position to purchase gas if it were supplied in the neighborhood.

Mr. Dykman: If he has the house there, he is in a position to use gas.

Deputy Commissioner Glennon: But he may have a house there, and not have the money to purchase gas.

Mr. Dykman: I do not believe that any man today, and I think you might very well take judicial notice of it, that any man today cannot afford to build a house unless he can afford to use gas.

By Mr. Hazleton:

Q. What is the average cost?

Mr. Dykman: I ask a ruling on my objection.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

A. The average price is \$9,000 to \$10,000.

Q. Do they consist of both one and two family houses?

A. Both one and two family houses; yes, sir.

Q. Have they all got proper installations made in them for gas service?

Mr. Dykman: How does he know that?

Mr. Hazleton: I am only asking him to testify to what he knows.

Deputy Commissioner Glennon: If he knows, well and good.

{fol. 354b} A. I do not know.

Q. Have yours?

A. Some of them have, and some of them have not.

Mr. Hazleton: That is all.

Deputy Commissioner Glennon: Anything further?

Mr. Dykman: No, no questions.

Mr. Deegan: I think it was after the last hearing a conference was held down in the Library between Mr. Dykman, Mr. Crummev, Mr. White, Mr. Waldron and Mr. Schabehorn, and myself a part of the time, and we were trying to clean up something with regard to the list of consumers. I do not know whether they had finally agreed upon any particular list, and if so, had any corrections made

on that that should appear in the record. You recall the conference, Mr. Dykman?

Mr. Dykman: Yes, but I was never very good on ancient history, and I have forgotten.

Mr. Deegan: I do not know what was done, because I was not there during all the time.

Mr. Schabelhorn: The only thing, there was an additional list, that Mr. White said that we left out a section adjacent to the ear barn, or where the mains end, that we had a main supplying gas that we did not take into consideration, I should say, probably 40 or 50 houses in the section we did not count. We never went over that territory after that, because I did not bring it to the attention of the Committee afterwards. I know I did not, and I do not think [fol. 354c] any one from the Committee did. There is a section we have passed and not taken into consideration, which Mr. White says we should, because the Committee had taken it for granted that there was gas in that particular territory.

Mr. Deegan: Did you make any corrections upon the maps?

Mr. Dykman: We drew a lot of lines upon the maps.

Mr. Deegan: Those maps have been offered in evidence?

Mr. Dykman: Not by me; there has not been a hearing since.

Mr. Deegan: No, that is my recollection.

Mr. Dykman: I do not think the lists were changed. My recollection is that all we did was to draw lines with a colored pencil on the maps, and I assume they had some relation to these studies, possibly used in making these studies.

Mr. Deegan: I never got a copy of such a map. I understood there were certain changes.

Deputy Commissioner Glennon: Were they used, Mr. Mitchell?

Mr. Dykman: My recollection is that we took one of these picture maps, as we call it, and laid it down on top of a very large map which the Committee introduced in evidence at the beginning of the proceeding and I took a colored pencil in my hand, Mr. Schabelhorn sat on the opposite side of the table, and I drew where he told me to draw.

Mr. Deegan: That was following out the diagram in these exhibits themselves?

[fol. 354d] Mr. Dykman: Yes, to some extent.

Deputy Commissioner Glennon: Was that map used in Mr. Mitchell's study?

Mr. Mitchell: That map was only in generalities. There is a line drawn around about what they thought they would like to have in the figures. We used that in conjunction with analyzing the testimony and studying out just what the petitioners were asking for. And when it came down to ascertaining the number of consumers, as I recall the testimony, there was conflicting opinions, and conflicting statements, but there was an understanding that the parties would get together and thrash the matter out, but from what I can ascertain, that was never done. There was no agreement ever reached on the number of actual consumers that would

take gas in this district, and where they were located, so I could never check it up and identify it. They attempted to, but they could not properly verify the list, and that is what has led me in my studies to depend entirely upon the number of houses and not the consumers.

Mr. Deegan: You did not go to the cards offered in evidence in this case, signed by the people who say they would use gas if mains were constructed?

Mr. Dykman: We were going to get together on those cards.

Mr. Deegan: I wanted to see if these things had been settled between the company and Mr. Hazleton and Mr. Schabehorn.

[fol. 354e] Mr. Dykman: I think the Commissioner will understand fully what happened at that conference.

Deputy Commissioner Glennon: Yes.

Mr. Dykman: And Mr. Schabehorn will correct me, if I am wrong; I sat on one side of a large table with a great big map they put in evidence, and we took our little map and put it over it, and Mr. Schabehorn told me where to draw the colored lines, so as to include all the territory in which he and his associates were interested.

The Witness: We simply tried to outline the sections needing gas. What became of that map, I do not know, but it is evidently in the possession of the Commission.

Mr. Deegan: I do not recall having ever seen it at all.

Mr. Mitchell: I believe the company has one copy and we have the other.

Mr. Deegan: It is a copy of this map with lines drawn around the different localities. I suppose there would be no objection to having it considered in evidence in this case?

Mr. Dykman: Not on my part; as an expression of Mr. Schabehorn's desires for his associates. That is what it really was. He was explaining to counsel what he wanted.

The Witness: We tried to outline the smaller map by outlining it on the larger map.

Mr. Deegan: I would like to have that considered in evidence if the parties are willing.

[fol. 354f] Mr. Dykman: I have no objection. It is a key to their big exhibit, one of their earlier exhibits.

The paper was received in evidence, to be marked when received, Commissioner's Exhibit No. 24 of this date.

Deputy Commissioner Glennon: Is that all today?

Mr. Hazleton: I want to inform the hearing that I have conferred with Mr. Deegan as to whether the franchise which the company holds gives them an exclusive right to furnish gas in the sections mentioned, and that if there is any way by which the residents out there, of what is known as the Central Gas Committee, could obtain a franchise permitting them to supply gas to the sections mentioned, they are ready, willing and able to undertake the matter immediately, financing it at this time and supplying gas to all those sections, and that would bring about an end of this entire matter.

I have mentioned it to Mr. Deegan, and he was going to inform me as to the provisions of the franchise they have there today, before we brought action upon the matter relating to obtaining the franchise.

Deputy Commissioner Glennon: Have you looked into the question?

Mr. Deegan: As I read the franchise, it does not seem to be an exclusive franchise for this territory. I think probably counsel to the company will agree with me on that point. I do not know whether they have gone into it at all, or considered it, but it certainly does not expressly provide that it is exclusive.

Mr. Dykman: I am about as well prepared to argue that question here now as I am a question of theology with his Reverence in the audience. I do not know. I never looked at the franchise. I do not think, though, that it is relevant in this proceeding.

Deputy Commissioner Glennon: As a matter of fact, it is not.

Mr. Hazleton: I wanted to advise your Honor that I took it up with Mr. Deegan. I do not think it affects this proceeding one way or the other. But we want to advise you what we are doing. We people believe we are entitled to gas and if the company is in such condition it cannot supply it, and does not want to do it, we are ready, willing and able, as I said to you, and if there is any way out of it, by which we could go ahead and relieve the company from any responsibility whatsoever, we would be only too glad to go ahead and do it, and we are sure we will not lose money there.

Mr. Dykman: You have never been in the gas business.

Mr. Hazleton: No, but we have taken advice from some people that have been in the gas business and are still in it.

Deputy Commissioner Glennon: Is there anything further?

Mr. O'Connell: Mr. Commissioner, in connection with this extension to Laurelton only, I would like to read into the evidence a [fol. 354h] letter from the Land Credit Corporation, which is interested in the development of that section, if there is no objection.

Deputy Commissioner Glennon: You may do so.

Mr. O'Connell (reading):

"Land Credit Corporation, New York City, Fifty Pine Street

December 19, 1919.

Hon. Lewis P. Nixon, Public Service Commissioner, 49 Lafayette Street, New York City.

DEAR SIR: We have been in communication for some time with the Woodhaven Gas Light Company, endeavoring to negotiate for an extension of gas to Laurelton where we have under way, through the Hathron Homes Corporation, a large and active development.

As it may be of assistance to you in connection with the application for this extension now before you, we repeat what we have already said to the Gas Company; that we stand ready to guarantee them against loss on this extension.

On May 26, 1919, I made the original proposal towards that end, and we are prepared to modify it as follows, with the proviso in order that the company shall be sure of our good faith in the matter, [fol. 354i] that the sum called for in the following proposal will be deposited in trust when the company accepts the order of the Commission and actually begins the work of constructing the extension; we will cause thus to be deposited the sum of \$35,000.00, to be advanced in accordance with the progress of the work as a loan to the Gas Company for a period of ten years, at interest at 5% per annum, and in addition we will execute in such form as will be satisfactory to you, a guarantee of a net return of 6% on the cost of the transmission main to Laurelton and the cost of the distribution of service actually laid in our property.

According to present estimates this will call for a total expenditure of \$69,038.23 if a distribution system is laid in the Laurelton properties to serve the present needs. Our proposal is therefore limited to a loan of \$35,000.00 in accordance with the terms here stated. Through one of the subsidiary companies, we are prepared to take the contract for construction at these figures, and put in charge thereof one of the best public utility engineers in this country.

Yours very truly, Land Credit Corporation, (Signed) by Harold G. Aron, President."

Mr. O'Connell: Mr. Commissioner, if there is no objection I will offer that letter in evidence.

[fol. 354j] Deputy Commissioner Glennon: You have it on the record now.

Mr. O'Connell: All right.

Deputy Commissioner Glennon: Is there anything further?

Mr. Dykman: Does the Commissioner care to hear from me on this subject of the letter?

Deputy Commissioner Glennon: I do not think it is necessary, at this time, at least. We may want to hear from you at some later date.

You both reserved, or rather you reserved the right to put in certain evidence, Mr. Dykman, and also to cross-examine Mr. Mitchell, if you deem it advisable.

Mr. Dykman: Yes.

Deputy Commissioner Glennon: I believe you have also reserved the right to cross-examine some one, Mr. Deegan, have you not?

Mr. Deegan: Just on the exhibits showing revenues and expenses of the Company up to October 31st.

Deputy Commissioner Glennon: When will you gentlemen be ready to do that?

Mr. Deegan: I will be ready within the next week or so.

Mr. Dykman: I do not know just what material we will want to use. Of course, if the Commission please, everybody will agree that a week's adjournment at this time of the year is a very different matter from a week's adjournment in the middle of the summer in a case like this.

Deputy Commissioner Glennon: A week from to-day is the day before Christmas.

[fol. 355] Mr. Dykman: I suppose what Mr. Deegan proposes is that Mr. White see Mr. Mitchell with regard to his underlying data? It probably would shorten the cross-examination considerably.

Mr. Deegan: Yes.

Mr. Dykman: Of course, there is the question of our capital value.

Mr. Deegan: Yes, that question has to be decided.

Mr. Dykman: There is some question, I suppose — I do not know exactly what the effect of Mr. O'Connell's letter is upon the proceeding. I was in conference with Mr. O'Connell and Mr. Wise and Mr. Deegan this morning, at Mr. Deegan's request and explained to them at that meeting the reasons which I saw for the impossibility of accepting their offer, which I think is made in the best possible spirit. But it is solely an argument on question of law, not a matter of fact, for reasons which must be apparent to the Commission, and which certainly are apparent to the counsel for the Commission in this proceeding here why that offer cannot be accepted.

Mr. Deegan: I do not know that I will accede to the last remark.

Mr. Dykman: I am not asking for any concessions. I know it as a matter of fact, let it go without any argument, and the Commissioner knows it and the counsel knows it, or they would not know the Transportation Corporations Law.

Deputy Commissioner Glennon: When do you suggest adjourning to?

[fol. 356] Mr. Dykman: January 6th.

Mr. Hazleton: I would like to have a hearing before the first of the year, if it would not greatly inconvenience Mr. Dykman or Mr. Deegan.

Deputy Commissioner Glennon: What have you got to say as to that?

Mr. Deegan: Personally, I think we ought to take an adjournment of ten days, in order to give the engineers an opportunity to——

Deputy Commissioner Glennon: December 29th, would that date be agreeable to you?

Mr. Dykman: Yes.

Deputy Commissioner Glennon: The hearing will be adjourned to December 29th at 10:30.

Whereupon, at 12:35 o'clock P. M. on the 19th day of December, 1919, the hearing in the above-entitled matter was adjourned until December 29th, 1919, at 10.30 A. M.

Last Exhibit No. 24.

[fol. 357] STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Further Hearing Order in Case No. 2376

Before Hon. Edward J. Glennon, Deputy Commissioner

New York City, December 29, 1919.

Met pursuant to adjournment at 10:30 o'clock A. M.

Appearances: E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District; Messrs. Cullen & Dykman, appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. Crummey, Esq., of Counsel); Edgar [fol. 358] F. Hazleton, Esq., Post Office Building, Fulton Street, Jamaica, New York, appearing for the Citizens Central Gas Committee of the Fourth Ward of the Borough of Queens.

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains in Springfield, Laurelton and other localities. (Further Hearing.) Are you ready, gentlemen?

Mr. Deegan: Ready for the Commission.

Mr. Dykman: Ready.

Mr. Deegan: Do you want to cross-examine Mr. Mitchell, Mr. Dykman?

Mr. Dykman: No, I have no questions to ask in cross-examination.

Mr. Deegan: I have a few questions to ask Mr. McGowan.

HENRY E. MCGOWAN, recalled as a witness, having been previously duly sworn, testified further as follows:

By Mr. Deegan:

Q. In those Exhibits Nos. 21 and 22 which were introduced through you at the last hearing, did you include under operating expense, Mr. McGowan, any amount of the expense in connection with the sale of gas merchandise?

A. No.

Q. Any portion of the expense to the Woodhaven Gas Light Company for selling gas stoves and other appliances?

A. I think not, sir; I am not sure.

[fol. 359] Q. Do you know?

A. No, I do not.

Q. Did you include under the revenues in those exhibits any

of the amounts obtained from the sale of gas stoves or other appliances?

A. No.

Mr. Deegan: That is all.

By Mr. Dykman:

Q. Mr. McGowan, when you were on the stand before, at page 331 of the minutes, you were asked by Mr. Hazleton a question concerning the surplus of the Woodhaven company and you answered, "The corporate surplus of the company as of December 31, 1918, according to the Public Service Commission's report was \$211,576.85." To what report were you referring in answer to that question?

A. The annual report of the company made to the Commission for the year 1918.

Q. Have you got it with you?

A. Yes, sir.

Q. From what page did you read that figure, Mr. McGowan?

A. I read from the balance sheet on pages 18 and 20.

Q. Now, does that report show on that page or any other page what amount of cash was on hand or on deposit in some bank at that time?

A. Yes, page 18 shows that.

Q. What is the amount?

A. Under the heading of Cash, \$8,527.13.

Q. I find also on page 18 an item, Total Fixed Capital Installed Since December 31, 1908, \$382,393.39. That is correct, is it not?

A. Yes, sir.

Q. Now, when you report this amount as surplus on page 19, as a matter of fact, what does that represent?

A. Why, that represents the accumulated profits since the Brooklyn Union Gas Company purchased the property of the Woodhaven [fol. 360] Gas Light Company, or purchased the stock of the Woodhaven Gas Light Company.

Q. And therefore it represents in large degree sums of money which had been put back into—

Mr. Deegan: I object to the question as leading.

Q. Why is this called "Surplus," then, in this report?

A. Because it is, as I said, the accumulated profits through a term of years.

Q. Who prints the form that you use?

A. What form?

Q. Who prints this form that I have in my hand?

A. That form is prepared by the Public Service Commission.

Q. And in making this report, therefore, you use the words and terms of the Public Service Commission?

A. Yes.

Q. Can you state to the Commissioner where this corporate surplus is at the present time?

A. That corporate surplus, or the moneys represented by the corporate surplus are invested in the fixed capital of the company

Mr. Dykman: That is all.

Mr. Hazleton: No questions.

Mr. Deegan: That is all.

Mr. Dykman: I will recall Mr. White.

JOHN T. WHITE, recalled as a witness, having been previously duly sworn, testified further as follows:

By Mr. Dykman:

Q. Mr. White, when you were on the stand before at one of the prior hearings and were testifying with reference to a summary—[fol. 361] as I recall, it is Exhibit 14—a summary of expenses necessary to supply the localities in question, I asked you if since that summary had been made there had been any reduction in the cost of materials? This is on page 254. You answered me that there had been a reduction in the cost of materials which would reduce your estimate of \$693,931.34 by \$40,632.42; and you testified that, save with that correction, your recapitulation was correct. Has there been any change since that day on which you gave this testimony of which I have spoken?

A. There has been.

Q. Will you state to the Commissioner what that change has been?

A. The change is caused by an increase in the cost of cast iron pipe which on October 1st of this year occurred, and also an increase in the cost of labor. The two taken together, in my opinion, will make an increase in the cost of my original cost of this Springfield extension of at least 20 per cent.

Q. Now, I assume you mean an increase, as your original estimate was modified?

A. I thought I so stated in my answer. I do mean that.

Mr. Dykman: If the Commissioner please, at the last hearing I made the offer of proof about capital investment. Our method of proving that would be, first, to obtain from Mr. White a statement of the items and details of installation. Possibly I should not proceed with that evidence until the Commissioner has ruled on Mr. Deegan's objection.

Mr. Deegan: I wish to repeat the objections that were made the last time, and in addition to state that the introduction of testimony [fol. 362] along this line, in a service case, is a bad precedent which seems to me should not be adopted by the Commission, because it would mean, as I said before, that in every case involving the smallest and most picayune extension, the company might go into its present investment and make a rate case out of it.

Deputy Commissioner Glennon: I will overrule the objection. Proceed.

Q. Mr. White, at my request, have you prepared a tabulation of mains, services and meters of the Woodhaven Gas Light Company? I show you this paper and ask you if you will state to the Commissioner just exactly what it is?

A. This first shows the mains in ground at December 31, 1913, taken from Exhibit 10 of the Ward 4 rate case. Starting off with those photos, which I do not suppose the Commission wishes me to read, I have added to them the new mains made from January 1, 1914 to June 30, 1919, and then deducted the mains taken up from the Woodhaven Company from January 1, 1914, to June 30, 1919. This deduction gives me a total in ground at June 30, 1919. I might add that these mains are cast-iron, for the most part American Gas Institute standard, bellins spigot, lead and yarn joints, with the regulation standard cast-iron specials at the intersection of streets.

The service pipes entering consumers' premises—I took the services in ground at December 31, 1913, from Exhibit 36 of the Ward 4 rate case. To that I added new services laid from January 1, 1914, to June 30, 1919, and deducted services taken up from January 1, [fol. 363] 1914, to June 30, 1919, and that gave a total in ground at June 30, 1919. The service pipes are of wrought iron, with the usual threaded fittings connected with the main and valves on the pipes where required by the City Ordinances.

The meters I took from the books set at June 30, 1919, and added those in stock at the same period. This gave me the total meters owned by the company at June 30, 1919. These meters are of the black, dry pipe made by the American Meter Company and the John J. Griffon Company, and I think there are a few John Hillen meters set on the district. That is all, I guess.

Q. Mr. White, you have spoken several times of exhibits in what you call the Ward 4 rate case. What connection did you have with the preparation of those exhibits in that case?

A. I prepared them and examined the exhibits before they went in and also testified in connection with the exhibits and put in valuation on the exhibits subsequently.

Q. So that in working with those exhibits in the preparation of this tabulation, you were working with your own data with which you were familiar?

A. Yes, sir.

Mr. Dykman: I offer this in evidence.

Mr. Deegan: May I see that just a minute?

Mr. Dykman: Yes.

By Mr. Deegan:

Q. These tabulations, Mr. White, were prepared from the records of the company?

A. Yes, sir.

Q. How much actual knowledge had you as to whether or not [fol. 364] they correctly represented mains and service pipes and meters?

A. Of the mains, I had personally installed under my supervision 40 per cent. Of the services, a greater percentage than that, I should say, at least 60; and of the meters, at least 40.

Q. Since what time?

A. Within the past ten years. I have opened myself every main at the service point in the territory during the last ten years for purposes of sewers, telephones and subway construction, if there was any up there, at least, elevated construction, elevated piers, continuation of subway line; and I have personally examined many of the services, hundreds of the services. I know that they exist, in addition to the fact of their installation; and the meters I might add in the same way.

Q. These records from which this tabulation was prepared go how far back?

A. Why, I could not tell you off-hand. They go back for a period of quite a number of years; quite beyond the rate case. Just how far back, I could not say.

Q. And do you know when the Brooklyn Union Gas Company secured the stock of these companies?

A. No, I am not familiar with that.

Mr. Deegan: That was, will you admit, in 1895?

Mr. Dykman: I will admit anything that is correct; I do not really know. The records will show.

Mr. Deegan: I simply want to find out if the records upon which this is based go back that far.

Mr. Dykman: If you tell me that is correct, Mr. Deegan, I will admit it.

Mr. Crumney: July, 1897.

[fol. 365] Q. You do not know whether the records go back that far?

A. I think some of them do, but I would not care to pin myself down to such a statement.

Q. You do not know of your own knowledge whether the records as kept prior to the time you came into the company were correct?

A. I do know that I verified the records in connection with this Public Service Commission's engineer and he spent about three months going over it, and when we concluded, why, we accepted the totals that were obtained by this investigation, and that was later accepted by the Commission in the inventory submitted.

Q. Does this tabulation show the mains, services and meters that are now actually in service?

A. It shows the mains, services and meters in the ground: the mains in the ground, the services to the consumers' premises and the meters either in stock or in use.

Q. Do you know if all these service pipes are now being used?

A. No, I do not know.

Q. Do you know about how many may not be used?

A. No, sir.

Q. Does the same answer apply to the mains?

A. The same answer for the moment will apply to the mains. But I could readily ascertain how many of those are in use.

The paper was received in evidence and marked Company's Exhibit No. 25 of this date.

By Mr. Dykman:

Q. When you say to Mr. Deegan that you do not know whether [fol. 366] a service is actually in use, what do you mean by that; that you do not know whether a particular house is taking gas?

A. Why, I take the ordinary gas man's acceptance of such a question or understanding of such a question. I understood that Mr. Deegan had in his mind that he wanted to ask me if I knew in each and every service there is a meter connected delivering gas to the consumer. That is what I inferred you meant, and that is the way I answered it.

[fol. 366] Q. Mr. White, have you also prepared a tabulation showing the paving with which the company is concerned?

A. I have.

Q. I show you this and ask you if it is your tabulation? If so, if you will state to the Commission what you did and what it shows?

A. It is. I have taken the pavement over mains at December 31, 1913, as per Exhibit 41 of the Ward 4 rate case. To that I have added the pavement disturbed for new construction over mains from January 1, 1914, to June 30, 1919. The total of the two give me the cost of pavement over mains actually disturbed for construction at June 30, 1919, and paid for by the Woodhaven Gas Light Company. The amount is \$1,662.68.

In a like manner I have taken the pavement over services at December 31, 1913, from Exhibit 42 in the Ward 4 rate case. To that I have added the pavement disturbed for new construction over service pipe from January 1, 1914, to June 30, 1919. These two figures added together give me the total pavement over service pipe actually disturbed for construction at June 30, 1919, which amounts to \$4,236.65.

Q. Mr. White, does the same statement of connection with the exhibit [fol. 367] mentioned in this tabulation apply as with the exhibit mentioned in the last tabulation?

A. Yes, sir.

Q. In other words, you were concerned with their preparation or prepared them yourself?

A. Yes.

Mr. Dykman: I offer this in evidence.

By Mr. Deegan:

Q. This tabulation, Mr. White, represents amounts actually paid by the company for paving?

A. Yes, sir.

Q. And can these be easily identified from your records?

A. Yes, sir.

Mr. Deegan: I have no objection.

The paper was received in evidence and marked Company's Exhibit No. 26 of this date.

By Mr. Dykman:

Q. You mentioned in the tabulation, Mr. White—in tabulation No. 25, Exhibit 10 and Exhibit 36 in the Ward 4 rate case, and in Exhibit 26, the pavement tabulation, you mentioned Exhibits 41 and 42 in that case. Were those exhibits in the Ward 4 rate case accurate, to the best of your knowledge and belief when made?

A. They were, sir.

Q. How does the territory with which you were concerned in the Ward 4 rate case compare with the present territory of the company, Mr. White; is it substantially the same, or has it changed.

A. I should say generally, it is substantially the same.

Mr. Dykman: That is all, Mr. Deegan.

[fol. 368] By Mr. Deegan:

Q. Mr. Mitchell suggests, Mr. White, that I ask you if the sustaining details from which these tabulations are based are in such shape that they can easily be identified without lengthy examination?

A. Why, I should say that Mr. Mitchell might dig through his Public Service records here in that particular case at the time I have stated and he can get the same information I did. That is how I got the particulars.

Q. Was there detailed data from which similar exhibits were prepared and introduced in that case?

A. Yes.

Q. And then since that time, your record would show——

A. Since that time, you can take the annual reports that the Woodhaven Company submits to the Commission, except the last few months.

Mr. Deegan: I wish to reserve cross-examination if it is necessary later on these exhibits.

Mr. Dykman: I will call Mr. Randolph.

WILLIAM W. RANDOLPH, 233 Broadway, New York City, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. Dykman:

Q. Mr. Randolph, what is your profession?

A. I am Consulting Engineer. I graduated as mechanical engineer from Stevens Institute of Technology in 1886, and from 1886 to 1889 I was engaged on both civil and engineering work. From [fol. 369] 1889 to the present time I have been engaged on erection,

design, management, examination, appraisals and reports on gas, electric, street railway and industrial properties.

Q. I believe you said you held the degree of mechanical engineer?

A. I did.

Q. You have in addition to that, have you not, Mr. Randolph, some connection and what you might call practical experience, possibly, in the gas business?

A. Yes; I have been quite intimately connected with the different details of the gas business during almost all of that period. In the latter years of my experience I have had a good deal to do with the management and direction of operation of gas companies and electric companies.

Q. You are the president, are you not, of a gas company in the South?

A. I am president of the Fayetteville Light and Power Company.

Q. At Fayetteville, North Carolina?

A. Fayetteville, North Carolina. I have been assistant to the president of the Buffalo Gas Company, Buffalo, New York; Syracuse Gas Company, Syracuse, New York; the Norfolk Gas and Electric Company in Norfolk, Virginia.

Q. Has the Fayetteville Company any connection with the Brooklyn Union Gas Company, or the Woodhaven Company, or any of these inter-allied companies?

A. No.

Q. Mr. Randolph, will you state to the Commissioner as briefly as you can the opportunities which you have had for gaining knowledge of the Woodhaven Gas Light Company?

A. In 1913, I appeared for the company in the Woodhaven case—

[fol. 370] Deputy Commissioner Glennon: As an expert witness?

A. (Continuing:) As an expert witness, and testified to the valuation of the Woodhaven Company; and in doing that, I went into considerable detail in going over the territory and familiarizing myself with the local conditions and going into the details of the company's records in connection with Mr. White, and generally familiarizing myself with local conditions. Since that time I have made no professional visits to the Woodhaven territory, but I have frequently passed through it, so that I know in a general way.

I think Mr. White stated that the general boundary lines of the territory are approximately the same that they were in 1913; and in making this appraisal, I did not feel that it was necessary to make any special personal inspection of the territory.

Q. You have, for the purpose of this appraisal and for this testimony made some investigation?

A. I have.

Q. Mr. Randolph, will you tell the Commissioner what you did?

A. In preparation of unit prices, I made an investigation of the cost of the principal items as of about June 30, that entered into the construction.

Q. June 30, 1919?

A. 1919. Investigating that through the purchasing agent of the Brooklyn Union Company, and checking the figures I used with the knowledge obtained from independent sources as to reasonable prices.

Q. Have you prepared a tabulation showing your estimate of the cost of reproducing the property of the company new as of June 30, 1919.

A. Yes.

[fol. 371] Q. Now, in preparing that tabulation, Mr. Randolph, where did you get your quantities?

A. I accepted the quantities given me by Mr. White, who has just testified.

Q. Do you mean by that quantities shown on these Exhibits 25 and 26, which I show you?

A. I would have to go through these in detail.

Q. You took the figures from Mr. White, did you?

A. I took the figures from Mr. White.

Q. Possibly it would be quicker, if necessary, to recall Mr. White and have him testify that those are the figures which he gave you, Mr. Randolph. I show you this paper and ask you if it is the tabulation of estimated cost of reproducing the property new as of June 30, 1919?

A. Yes.

Q. Will you state to the Commissioner what that first tabulation shows, Mr. Randolph?

A. In detail?

Q. Just practically reading it?

A. Street mains, \$925,258.59; plant 20 per cent. overhead, \$185,453.71; total mains \$1,110,722.30.

Q. I think, Mr. Randolph, if you will simply state what the items on it are?

Deputy Commissioner Glennon: Are you going to offer the paper in evidence?

Mr. Dykman: Yes.

Deputy Commissioner Glennon: It will not be necessary for him to state.

Mr. Dykman: I will simply offer it in evidence, then, to save time.

The paper was received in evidence and marked Company's Exhibit No. 27 of this date.

Q. In addition to that, Mr. Randolph, you prepared what might be called "Supporting Data." I show you this tabulation headed [fol. 372] "Street Mains," and ask you if that is yours?

A. Yes, sir.

Mr. Dykman: I offer this in evidence.

The paper was received in evidence and marked Company's Exhibit No. 28 of this date.

Q. You have also prepared a tabulation on services, which I show you?

A. Yes.

Mr. Dykman: I offer this in evidence.

The paper was received in evidence and marked Company's Exhibit No. 29 of this date.

Q. You have also prepared a tabulation of consumers' meters in use. Is that it which I show you?

A. Yes.

Mr. Dykman: I offer that in evidence.

The paper was received in evidence and marked Company's Exhibit No. 30 of this date.

Q. You have also prepared a tabulation of the consumers' meters in stock, in shop; is that it, which I show you?

A. Yes.

Mr. Dykman: I offer that in evidence.

The paper was received in evidence and marked Company's Exhibit No. 31 of this date.

Q. These tabulations, Mr. Randolph, represent your estimate of the cost of reproducing the quantities of material furnished you by Mr. White?

A. Yes.

[fol. 373] Q. As being now the capital investment of the company?

A. Yes.

Q. Will you look at Exhibit 27; you have added to your item for street mains, services and consumers' meters, 20 per cent. overhead?

A. Yes.

Q. Will you please explain to the Commissioner how that overhead is made up?

A. That is an item which is taken, by and large, to represent a conservative figure to be added to the cost of reproduction, to cover preliminary expense, including legal advice, preliminary engineers' reports, promoters' charges, which can vary, in my experience, from two to five per cent.; engineering supervision and office expense, which can vary from five to ten per cent.; commissions and contingencies, not otherwise provided for, can vary from two to five per cent.; insurance, liability and fire can vary from one-half to one per cent.; taxes, from one and one-half to two per cent.; interest during the period of construction on moneys required to pay for the construction of the property, from eight to twelve per cent.; making a variation there from 19 to 35 per cent., taking the minimum singly and the maximum singly; and I assume 20 per cent. as being a reasonable figure, as some of the elements may be higher, and some lower. But I think it would be at least 20 per cent. before the construction work was completed.

Q. And you base that upon the experience which you spoke of when you first went upon the stand?

A. Yes.

Q. Now I find here on Exhibit 27, Mr. Randolph, an item of \$65,000 working capital. Will you state to the Commissioner what that represents?

A. That represents a sum which is made up as follows: taking the [fol. 374] average cash on June 30th as \$7,259.37 and an average of same for twelve months' period as \$8,518.74; the company's outstanding bills, December 31, 1918 and June 30, 1919, and the average for the twelve previous months, amounting to \$16,595.20 for June 30th and for the average, \$16,877.98; materials and supplies being 50 per cent. of the materials and supplies carried by the Jamaica Company for the common benefit of Jamaica, Woodhaven and Richmond Hill, amounting to, for June 30th, \$9,177.23, and for the twelve months' period, \$10,431.98. One-half of the additions in mains, meters and services, the quantities averaged over the five and one-half years past totaling \$60,962, and a half of that being \$30,481—that would make the total as of June 30, 1919, \$63,512; the total for the average of twelve months' periods prior to June 30, 1919, \$66,309. I assumed it as \$65,000.

Q. I find also on that Exhibit 27, Mr. Randolph, an item, "Going Concern Value." State to the Commissioner what that represents.

Mr. Deegan: I must object to this, Mr. Commissioner, because no proper foundation has been laid for the introduction of testimony showing "Going Concern Value." Under the decision of the Court of Appeals in the Kings County Lighting case, the proper way to show that is to show the actual experience of the company.

Deputy Commissioner Glennon: I will sustain the objection.

Mr. Deegan: And I move that the amount shown on the exhibit as applied to going concern value be stricken from the exhibit.

[fol. 375] Deputy Commissioner Glennon: Motion granted.

Mr. Dykman: I suppose I may have an exception to both?

Deputy Commissioner Glennon: Surely.

Mr. Dykman: I submit, sir, that my exception to the ruling at the present time is entirely good, irrespective of what the Court of Appeals has held, because the witness has not had an opportunity to say what going concern value represents on his tabulation, and under the present state of the authorities, I defy anybody, even with proper deference to the Commissioner, to guess without some statement, what this witness means by "Going Concern Value."

Deputy Commissioner Glennon: Possibly you might have a chance to test it out some day.

Q. Aside from this item in dispute, what do you make the total value, or the total estimated cost of reproducing the property new?

A. Excluding going value, I make the total \$1,665,031.45.

Q. You have used, Mr. Randolph, present cost in making these figures, have you not?

A. As of the date?

Q. Yes, as of the date shown, as of June 30, 1919?

A. Yes.

Q. What is your opinion, based upon the experience to which you have testified and your present daily experience—what is your opinion as to an increase or decrease in those prices?

A. You mean for the future, or for the present time?

Q. Yes, for the reasonably near future?

[fol. 376] A. Well, I have found that prices of labor and material entering into this valuation have increased from my valuation up to the present time. The general tendency as indicated by the prices of labor and material does not seem to me to be downward, so that for a reasonable time, which would be contemplated by the rate in question, at least for a year or two, I would say I see no evidence of a downward trend.

Q. Then you believe that the unit prices which you have used in making this calculation will prevail for some time to come?

A. There will be fluctuations. Those fluctuations are so far up and in these uncertain times it is difficult to say, or I hesitate to speculate on how long they will continue upwards.

By Deputy Commissioner Glennon:

Q. You are safe in saying that it will continue for some time to come; that is what it amounts to?

A. Yes, I do not want to tie myself down, Mr. Commissioner—

Q. No, not as an expert, of course.

A. (Continuing:) To a prediction of what the future will hold forth for any great length of time.

Cross-examination by Mr. Deegan:

Q. Mr. Randolph, how does your estimate of the cost of these mains, services, meters and other matters which you have covered, excluding going concern value, compare with the estimate which you submitted in the 4th Ward rate case?

A. Materially high.

Q. Do you know how much higher your total figure is now over what it was then?

[fol. 377] A. Why, I would have to bring in some figures that I have in my office to give you that.

Q. Do you know if it is 50 per cent higher?

A. Well, I think it is safe to say that it is 50 per cent higher.

Q. Will you, at the next hearing, give us those? I presume we have those figures in the case. I thought you might know them now and give them to us for the record. What do you mean by reproduction cost?

A. The expenditure necessary at the present time to reproduce the physical property of the Woodhaven Company as given in Mr. White's list of the mains, meters and services.

Q. You do not for a moment contend that the Woodhaven Gas Light Company, in constructing this property, spent anything like this amount?

A. I have no knowledge of what they spent, and I am dealing with the value rather than actual cost.

Q. You did not consult the records in any way?

A. No, not past records.

Q. You did not consult the books for that?

A. No.

Q. You did not consult the books either as to labor costs or material costs?

A. In my inquiries I have made some comparisons, because I knew something about labor cost in the past and labor cost at the present time, but the fact that labor cost so much in the past did not influence my decision under present conditions.

Q. The inquiries that you made were made of Mr. White and of the Purchasing Agent of the Brooklyn Union Gas Company; did I understand you to so testify?

A. In the past they were made of Mr. White, the Purchasing Agent, the payrolls at times of the company; I inspected payrolls.

[fol. 378] Q. You have inspected payrolls?

A. I did that back in 1913, to arrive at what the conditions were at that time.

Q. But for the purposes of this case, you did not inspect the figures as shown on the payrolls of 1913?

A. No.

Q. You refer to the fact that you have consulted with the Purchasing Agent of the Brooklyn Union Gas Company as to certain unit costs?

A. As to the cost of service pipe and street main pipe, specials and fittings and meters.

Q. Did you understand that the costs which he gave you were what that company had actually paid?

A. No, I did not ask him for that information at all.

Q. What was it you asked him about?

A. I asked for the present, for the prices that the company would have to pay for material as of that time.

Q. But not as to what the company had actually paid?

A. No.

Q. Do you know how much property has been added to the Woodhaven Gas Light Company's property since 1913?

A. As shown by the books?

Q. Yes.

A. No.

Q. You do know, I assume, that the greater part of the property was constructed prior to the war?

A. Yes, I should say so.

Q. You did not consider, or did you consider in any way the age of the pipes, mains and other properties which you have appraised?

A. No; I have taken no depreciation off at all.

Q. I do not know as I want to go fully into that question just now, but a few questions just occurred to me. Have you actually seen any of the pipes, that is, the mains and service pipes of the [fol. 379] Woodhaven Gas Light Company?

A. Not since 1913.

Q. How much did you see then?

A. In percentage of the total, an infinitely small amount.

Q. Well, how many places, or how long were the pipes that you did see; can you give us any idea?

A. As I recall it, I saw probably four or five openings which showed service connection, where services and mains were exposed.

Q. What was the average length of the opening?

A. Why, I could not say with any definiteness. Some of the mains, I think, were being laid at the time, which would, of course, have no bearing on what you are asking. There would be a long extension there. Where they were opened at my request, they were probably four or five feet long.

Q. That is just an infinitely small amount of the entire mains and services?

A. Yes.

Q. Did they not show the result of any wear and tear or climatic conditions upon them?

A. Not that I could find.

Q. But they did actually show some?

A. Of course, when cast-iron pipe is put into the ground, it always has a rusty appearance shortly afterwards, even though it is perfectly new when it is put in; and then, in that kind of soil, the rust is very apt to form a hard coating around the pipe, which, to get to the surface, you would have to scrape off. That seems to preserve the pipe a great length of time, so that by simply exposing the pipe and examining it I could not do more than to see that it had, as far as I could tell, this original outside diameter and had no appearance of deterioration.

Q. In your experience as a constructing and operating gas engineer, have you ever found instances where leaks occurred in pipes other than at the joints?

A. Yes, I have found very frequently, as the result of electrolysis, leaks in pipes.

Q. And you attributed those leaks only to electrolysis?

A. Electrolysis, or soil that was particularly bad for, or particularly favorable, I should say, for oxidation.

Q. So that soil does also affect the pipes?

A. Yes, it does, especially where ashes are dumped over the pipes. But in soil such as generally prevails in the Woodhaven territory, I should not expect to see deterioration, noticeable deterioration, from observation.

Q. What do you know about the soil in this territory? What investigations have you made of it?

A. Well, in 1913, I made the inspections that I spoke of definitely there, and drove over the territory a great deal.

By Deputy Commissioner Glennon:

Q. You rode over it?

A. Drove over it.

Q. In a machine, an automobile?

A. Yes. And since then I have been through that section quite frequently, driving, and have noticed the general characteristics of the soil, which was confirmed by inquiry of Mr. White as to the general nature of the soil there in his territory.

Q. You have seen four or five openings; is that what I understood you to testify?

A. Yes.

Q. And were those openings all in the same section of the Woodhaven Company's territory, or were they in different sections?

A. They were scattered; I could not tell you where they were, today, from memory; but it was opened with a view to confirming my opinion of the soil.

Q. And what kind of soil is it?

A. It is sandy soil, mixed with clay; a soil that in most instances [fol. 381] a man would have to use a pick on to loosen it; when he got a little below the surface, it would be quicker to do it that way than to drive a shovel down with the foot. I think that prevails more up in the Jamaica section though. You get some glacial rift where the stones, probably, in some places are as much as a man would lift, from gravel to fairly good sized ones. But that, as I recall it, does not exist down in the Woodhaven territory, where the mains are located. At any rate, I have assumed easy excavating conditions.

Q. Have you any knowledge, Mr. Randolph, of the retirements of property made by this company in the past?

A. Why, the memoranda that Mr. White gave me showed additions, as I recall it, showed the gross number of feet laid and showed the number of feet taken up or abandoned from one cause or another, and then the next net figure which went to make up his total since 1913. Now, I have no totals showing the pipe abandoned prior to 1913.

Q. Have you the details showing pipes abandoned since 1913?

A. Not with me.

Q. Will you produce that at the next hearing?

A. Yes, sir.

Q. Do you know for what causes this pipe was abandoned?

A. No, and I did not inquire.

Q. What would impress you as the probable causes for the abandoning of pipes?

Mr. Dykman: I object to that as improper.

Mr. Deegan: He is an expert; I think he ought to be allowed to answer the question.

Deputy Commissioner Glennon: I will overrule the objection.

[fol. 382] A. Why, probably increased demand through sections in which small sizes existed.

Q. That is, inadequacy of existing pipe; is that your idea?

A. Yes, and the relaying of larger mains through that section, displacing the small mains.

Q. What about wear and tear?

A. Why, with the cast-iron pipe, I would not expect removals to come from wear and tear.

Q. Is that the kind of pipe, do you know, that is used throughout this entire section?

A. Cast-iron is used on all sizes, four inches and larger—three inches, I think, and larger.

Q. Do you know if that is actually the kind of pipe that is used throughout this section by the Woodhaven Gas Light Company?

A. Yes.

Q. Do you think that the mains and service pipes that are now being used by the Woodhaven Gas Light Company are as good as new pipes?

A. Why, I should say, yes, in regard to the mains. In regard to the services, I would expect renewals to come more frequently than would be necessary in mains. So that, I assumed that the maintenance of the services, as it has been necessary to renew them, has put those services in 100 per cent condition.

Q. So that they are practically as good as new?

A. So to all intents and purposes, they are as good as new.

Q. If you were going to build an extension, would you order second-hand pipe if you could get it?

A. After inspection of the pipe, I might.

Q. Would you be willing to pay as much for second-hand pipe as for new pipe?

A. If the inspection showed the second-hand pipe to be as good in all respects, and I could not make a better bargain with the second-hand dealer.

[fol. 383] Q. Would you recommend to the company the purchase of second-hand pipe for the construction of a new extension?

A. Not generally speaking.

Q. Why not?

A. Because second-hand pipe, I think, in the sense that you are using it, would have been in the ground once and would have been removed; and if you could get first-hand pipe at anywhere near the same figure, I would prefer to have it; it is more easily worked. If it is cast-iron pipe, it may not be any better; but in taking the pipes apart, they would have to be broken. In removing them, parts of the pipes are frequently broken, and in the case of wrought-iron pipes, the soil that attaches to them makes them undesirable for re-use frequently and damages the tools and cuts the threads.

Q. Is it not a fact, Mr. Randolph, that once a pipe has been used, it loses some of its market value, its original market price?

A. Undoubtedly. We always expect to buy second-hand material for less than new material.

Q. Certainly, that is the general rule.

A. That is the general rule.

Q. Do you know of any exceptions to it?

A. No, except in cases of necessity, you would pay any price.

Q. That is the only case where you think there would be an exception?

A. Yes.

Q. Mr. Randolph, on this Exhibit No. 29, you have here mains at curb, 1½ inches, total services and so on. What does that mean?

A. That means, I take it, that they have 299½-inch services extended to the curb, for future extension.

Q. That is, they are not now being used?

A. Not now being used.

[fol. 384] Q. What can you say, Mr. Randolph, about depreciation of meters, or do they depreciate, in your opinion?

A. Yes, they depreciate from time to time.

Q. Have you made any allowance in your estimate for the depreciation of meters?

A. No.

Q. Why not, if, as you say, they depreciate from time to time, and this is the reproduction cost, new, of the property?

A. The meters are maintained by the company through their repair accounts. Of course, the extensions and new meters are in there. So, too, for the purposes of their use I think the meter that is in use today is worth 100 per cent of its cost now. I think that the Commission's rules call for overhauling the meters once in seven years. That means that when a meter is taken out for repair, it goes to the repair shop, and all parts needing renewal are being renewed, and when it leaves the shop and gets back into service, it is as good as a new meter.

Q. But, do you know if this company at any time consigns any meters to the scrap pile?

A. Undoubtedly it must, but I have no record of how many.

Q. You have not any record?

A. No.

Q. In your experience, have the companies under you consigned meters to the scrap pile?

A. Yes.

Q. Can you give us any idea of how many, and what percentage and number?

A. No, I have no percentage figures in that line.

Q. What would cause, or what did cause, the taking out of service of these meters and not using them any further?

A. Well, they are taken out and tested, and it is found they need [fol. 385] repairs. Then when they are sent to the shop, the repairs are found in all probability to cost more than it is worth on that meter, and they have to buy a new meter.

Q. Would any meters be cast aside because of inadequacy?

A. In all probability, not; they could be removed to some other place, smaller consumers, and re-used in that way indefinitely. The general policy and tendency may be to scrap a smaller meter quicker than to scrap a larger meter.

Mr. Deegan: That is all for the present. I would suggest that we take an adjournment for three weeks in this case. Mr. Mitchell tells me that they cannot make any satisfactory check on this in less than that time, and I think it would be futile to set a hearing down in a

week or ten days, because we would not be prepared to make much headway. If we could have an adjournment of three weeks from today, it would be about right. We are all tied up in gas litigation, and so are the companies.

Mr. Hazleton: Of course, in the condition the case is now, the petitioners' side is being practically conducted by Mr. Deegan; and if he expects to introduce proof here which he has just apprised me of this morning, and if he cannot prepare it within three weeks, as far as I am concerned, I cannot see any way of getting away from it. He is here to do his best.

Mr. Deegan: It is a case where Mr. Mitchell, who has charge of the Appraisal Bureau, only has two or three men now. I understand he [fol. 386] has lost five men within the past four weeks' time, and he is greatly handicapped. I know that he would work day and night on it, if necessary.

Deputy Commissioner Glennon: Oh, yes, I understand the conditions prevailing here, as far as Mr. Mitchell is concerned, particularly.

Mr. Hazleton: What is it you want, data relative to Mr. Randolph, to check up Mr. Randolph's testimony?

Mr. Deegan: That is the first thing I want.

Deputy Commissioner Glennon: What does that work consist of, Mr. Mitchell, that you have to do; will you explain?

Mr. Mitchell: Mr. Commissioner, it would be necessary to verify the authenticity of these figures and to find out from what source they came, and to check up the additions to property that have been made since this original case, and to pass upon the reasonableness of the unit prices which have been used by Mr. Randolph, and, perhaps, prepare independent estimates based on an entirely different theory, than the cost to reproduce at the present time, under the present prices which he has figured on.

Mr. Deegan: I do not think there is much doubt about that.

Deputy Commissioner Glennon: I had some idea of what he had to do. I simply asked so that we might all be aware of the work entailed in preparing Mr. Mitchell's estimate, and also in assisting Mr. Deegan for the purpose of cross-examination. Will it take three weeks, you think?

[fol. 387] Mr. Mitchell: I think so, Mr. Commissioner. We are very greatly handicapped at the present time. We have cases that are very, very urgent, urgent to such an extent that it really takes this company in with the rest, and that is this 80-cent case of the Brooklyn Union Gas Company. It is very very urgent, and I have lost five men in the last five weeks, and only have four available engineers on this work. We could do it, provided we could get the assistance from other Bureaus, and could get other engineers. We might be able, but at the present time I am unable to say whether it is possible to do such a thing without making further arrangements.

Deputy Commissioner Glennon: How about three weeks from tomorrow?

Mr. Hazleton: That would be agreeable.

Deputy Commissioner Glennon: Would that be agreeable to you, Mr. Dykman?

Mr. Dykman: Subject to Mr. Randolph.

Mr. Randolph: I have several out of town engagements, but I will try to make it so that I can be here. That would be what date?

Deputy Commissioner Glennon: January 20th.

Mr. Dykman: May I ask Mr. White a question right from his seat here, just one question, so that I will not forget it?

JOHN T. WHITE, recalled as a witness, having been previously duly sworn, testified further as follows:

[fol. 388] By Mr. Dykman:

Q. Mr. White, these Exhibits 25 and 26 which I put in through you—do they contain the data with which you supplied Mr. Randolph for the preparation of his testimony?

A. They do, sir.

Deputy Commissioner Glennon: That will be all for today. We will adjourn to January 20th, at 10:30 o'clock A. M.

Whereupon, at 12:45 o'clock P. M., on the 29th day of December, 1919, the hearing in the above entitled matter was adjourned until January 20, 1920, at 10:30 o'clock A. M.

Last Exhibit No. 31.

[fol. 389] STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOONHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Further Hearing Order in Case No. 2376

New York City, January 20, 1920.

Met pursuant to adjournment at 10:30 o'clock A. M.

Further hearing in the above entitled matter, by direction of Deputy Commissioner Glennon, was adjourned until February 10, 1920, at 10:30 o'clock A. M.

Last Exhibit No. 31.

[fol. 390] STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Further Hearing Order in Case No. 2376

New York City, March 10, 1920.

Met pursuant to adjournment at 10:30 o'clock A. M.

Further hearing in the above entitled matter, by direction of Deputy Commissioner Glennon, was adjourned until March 24, 1920, at 10:30 o'clock A. M.

Last Exhibit No. 31.

[fol. 391] STATE OF NEW YORK:

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of THE WOODHAVEN GAS LIGHT COMPANY to Such Extent as May Be Necessary to Serve Residents of Springfield, Laurelton, and Certain Other Localities in the Borough of Queens, City of New York.

Further Hearing Order in Case No. 2376

Before Hon. Edward J. Glennon, Deputy Commissioner

New York City, March 24, 1920.

Met pursuant to adjournment at 10:30 o'clock A. M.

Appearances: E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District; Cullen & Dykman, Esqs., Appearing for the Woodhaven Gas Light Company (by Jackson A. Dykman, Esq., and Edward J. Crummey, Esq., of Counsel); [fol. 392] Aron & Wise, Esqs., Appearing for the Hathron Holmes Corporation and the Land Credit Corporation (by J. H. O'Connell, Esq., of Counsel); G. M. Berthold, Esq., of Laurelton; W. H. Schabehorn, Esq., of Springfield Gardens; Mrs. R. G. Koehler, Clinton Avenue, Springfield Gardens; Mrs. F. Z. Olner, 2d Street, Springfield; A. H. Smith, Esq., Maple Avenue, Springfield.

Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains in Springfield, Laurelton and other localities (further hearing).

Are you ready, gentlemen?

Mr. Dykman: Ready.

Mr. Deegan: Ready. I will call Mr. White.

JOHN T. WHITE, recalled as a witness, having been previously duly sworn, testified further as follows:

By Mr. Deegan:

Q. On Exhibit 25 you show the number of mains taken up from January 1st, 1914, to June, 1919, which total 18,356 feet. Do you know for what causes those mains were taken up?

[fol. 393] Mr. Dykman: Has that got a number?

Mr. Deegan: 25.

A. From memory I would say they were taken up for sewer construction and grading of roadways principally.

Q. Were any of them taken up for inadequacy?

A. No.

Q. Have you looked into that question? I might say that I could ask Mr. Randolph to give me that information, but I thought perhaps I could get it from you at first hand.

A. To the best of my recollection there were not.

Q. Have any mains been taken up since June 30 of 1919?

A. I do not think so, but I would not care to say positively because it is not fresh in my mind. I have not been over this lately.

Q. With regard to the services, you also show certain services were taken up to about 231; do you know the causes of the removing of those services?

A. The causes there was about the same as in the mains, on account of the sewers, taking them from the old mains, putting them on the temporary lines, I should say again, through memory.

Q. Now I notice in your lists of meters you do not show the number of meters that have been retired or taken out of service since the appraisal that was made by you in the Fourth Ward cases?

A. I did not consider them.

Q. Some meters have been retired since that time, isn't that a fact?

A. That I even could not say because I do not know. I do not remember. There must have been a few.

Q. Was there any reason for omitting the number of meters that were retired during that period when you showed the number of [fol. 394] mains and the number of services retired?

A. Except that it is not customary to show that. That was the only reason. I want to make an effort to show what is usual in stock.

Q. I understand with regard to these services, they included the services from the main to the consumer's house?

A. Yes, sir.

Q. Isn't it the practice of the company to charge the consumer with the cost of the service that is upon his premises?

A. Yes, sir.

Q. That cost includes not only the actual cost of the pipe, but also the labor cost?

A. It includes some of the pipe cost and some of the labor cost.

Q. You do not charge the consumer for all of the pipe material and labor for service upon the consumer's premises?

A. Hardly, because we—May I explain?

Deputy Commissioner Glennon: Yes, go ahead.

A. Because we have heretofore charged, to a few months ago, or a year ago, I think it was, fifteen cents a foot, irrespective of the size. Now it is perfectly obvious to anybody that when you charge a certain amount irrespective of the size, all the labor, all the material, cannot enter into such a unit of value.

Q. Was that the unit prices that you used for a number of years—

A. Yes, sir.

Q. Do you still use that?

A. No, it has been changed.

Q. What is it now?

A. Up to two months ago it was 25 cents a foot for inch and a quarter, and I think it is 35 cents a foot for inch and a half.

[fol. 395] Q. In installing meters, isn't it a fact that the company charges to operating expenses the cost of the installation?

A. Everything in the immediate connections except the meter; that is charged to the capital of the company.

Q. That is, the meter itself is charged to the capital account?

A. Yes, sir.

Q. In laying these mains and services, you have charge of that work?

A. Yes.

Q. Your men do the actual work?

A. Yes, sir.

Q. You do not at any time hire outside contractors to lay the mains and services?

A. Not within my recollection, no, sir.

Q. Have you bought any mains and services since this proceeding first started?

A. Bought no main pipe, no, sir. We have bought some service pipe for our current requirements; small lots.

Q. About what time did you buy that?

A. The service pipe, sometime during 1919; just when I could not say.

Q. You do not recall the price that you paid for it?

A. No.

Q. Looking over some of the exhibits introduced by you in Case 1787, I find that one was marked Exhibit 81; I show you that exhibit; that is in the printed case?

A. Yes.

Q. On appeal?

A. Yes, sir.

Q. Now I find that in your original estimate 429,211 feet of mains, that should have been reduced by a small amount, isn't that so?

A. Yes, sir.

Q. How many feet?

A. It is stated there, 334 feet and 4 inches. No, pardon me; 334.4 feet.

Mr. Crummey: What was the original number?

Mr. Deegan: 81.

[fol. 396] Mr. Crummey: No, what is the amount of feet?

Mr. Deegan: 330.

Mr. Crummey: From what; that is to be deducted from what?

By Mr. Deegan:

Q. It has been called to my attention, Mr. White, that the total number of feet, mains, as given by you, the total number taken by Mr. Hine, the Commission's chief gas engineer, he made an appraisal in the Fourth Ward cases; do you know that to be a fact, there is a discrepancy?

A. Yes, sir.

Q. Do you know what that is?

A. The total number of feet, you mean?

Q. Yes.

Mr. Dykman: What is the exhibit?

Mr. Deegan: 81.

Mr. Dykman: What bearing has this on the case? I think it is immaterial.

Mr. Deegan: I think it is very material.

Mr. Dykman: I submit, sir, that if there is to be any conflict between the finding of the Commission and Mr. White's conclusions it should be introduced by some living witness for the Commission.

Mr. Deegan: That will be introduced. I thought I could save time by having it—

Mr. Dykman: I do not know how much it is. I do not know whether it is really material, but it seems to me it is the better way of proving it.

Mr. Deegan: I thought if Mr. White knew, it would expedite the matter.

[fol. 397] Mr. Dykman: I have no opportunity to cross-examine the printed record in the Fourth Ward cases. I object to it on that ground.

Deputy Commissioner Glennon: Objection overruled. Now ask the question of the witness.

Mr. Dykman: I respectfully except.

By Mr. Deegan:

Q. Do you know what the discrepancy was between your total number of feet of mains and the total number used by Mr. Hine in his appraisal in the Fourth Ward cases?

A. In reading over that testimony some time ago, I noticed that the discrepancy between my inventory and Mr. Hine's was about two thousand and some odd feet. When you take the three companies in the Fourth Ward, the three together——

Q. Yes.

A. If you take Mr. Hine's inventory of the Woodhaven case and my inventory of the Woodhaven case, you will find that there is a larger discrepancy, just to what amount I do not know. It is much larger than——

Q. Isn't it around 15,000?

A. Something around that figure, yes.

By Deputy Commissioner Glennon:

Q. How do you account for that?

A. There was a general mixup in that condition. Mr. Commissioner, because——caused by the three companies in the Fourth Ward owing to their boundaries, laying mains in the early part of their history, where their boundaries were not equally or clearly defined, as shown in the record, to take what we called "an asset to income [fol. 398] theory." All the mains that were laid by one company in another company's territory, the territory of a different company, were considered as the asset following the income.

Q. In other words, that is the method that you followed?

A. Yes, sir.

Q. Didn't you have a conference with Mr. Hines with regard to the total number of mains, meters, services, and did you not substantially agree?

A. Not on this asset income theory. He conducted his investigation independent of mine and arrived at, as you will see, a different conclusion.

Mr. Dykman: Just a moment; I must renew my objection to the method of introducing this testimony. I have no means of knowing the basis of Mr. Hine's conclusion; no opportunity to cross-examine him. It is improper for this written testimony in the former case to be introduced here. It is not binding on us in this case.

Deputy Commissioner Glennon: Motion denied: It is the subject of cross-examination of your witness.

Mr. Dykman: I move to strike out his testimony.

By Mr. Deegan:

Q. What did you mean by this answer to the question that I asked you at the last hearing, on page 426:

"Q. You do not know of your own knowledge whether the records as kept prior to the time you came into the company were correct? [fol. 399] A. I do know that I verified the records in connection with this Public Service Commission's engineer, and he spent about three months going over it, and when we concluded, why, we accepted the totals that were obtained by this investigation, and that was later accepted by the Commission in the inventory submitted."

A. Precisely what I said.

Q. That you accepted the conclusions which he reached?

A. No, not the final ones. There were two separate conclusions reached, one was before we discovered this involved condition in his inventories. I agreed to them within a very few feet. It was not worthy of consideration, but afterwards he discovered this involved condition existing and then we operated independently.

Q. Although you say here "and when we concluded, why, we accepted the totals that were obtained by this investigation,"—doesn't that refer to a joint examination and investigation by both you and Mr. Hine?

A. It does refer to the original investigation, but not to the second one. I perhaps had that in mind when I made that reply.

Q. Do you know whether any of the mains of the Woodhaven Company are in the franchise territory of the Newtown Company?

A. I cannot recollect any.

Q. Didn't you testify at the proceedings before the Commission in that case that there was some stretch of main in the Newtown territory?

A. If I so testified, it was so at the time, but I cannot remember.

Deputy Commissioner Glennon: Can you refer to it specifically?

Mr. Deegan: No. I did have a note of it, but I do not find it.

[fol. 400] Mr. Dykman: You do not find any such testimony, then, Mr. Deegan?

Mr. Deegan: I say that I did find it; I made a note of it, but I lost the note. I cannot find it at the present time.

By Mr. Deegan:

Q. In that Fourth Ward case, you submitted an exhibit showing the age of the mains and the services of the Woodhaven Company; do you remember submitting exhibits?

A. I submitted so many exhibits there, I would like to see it first.

Q. Exhibit 3?

A. That may be one of my exhibits, I do not know. I would like to look at it before I say that it is.

Deputy Commissioner Glennon: Are you familiar with the exhibits in that case?

Mr. Dykman: Not particularly; that is one of the reasons I am objecting to this.

Deputy Commissioner Glennon: I thought that you might possibly be able to aid the witness.

Mr. Dykman: The examination on this line is utterly improper.

Deputy Commissioner Glennon: Can't you tell from the marking of the exhibit?

Mr. Deegan: I was going to refer to his testimony in the case at the time this exhibit was introduced.

Mr. Dykman: May we have the page involved in the record that you are referring to?

Mr. Deegan: Mr. White was a witness on February 17th, 1914, page 212, folio 636; page 214, folio 642, when this exhibit was introduced.

[fol. 401] A. Yes, sir, I did.

Deputy Commissioner Glennon: You did what?

The Witness: I submitted these exhibits, No. 3, the Woodhaven company.

Mr. Deegan: I would like to have this exhibit considered in evidence in this case.

Mr. Crummey: You will never close up this case today by putting those things in.

Mr. Dykman: May we look at it?

Counsel looks at exhibit.

No objection to this. I think time might be saved, and it may simplify matters if some arrangement could be made to give the reporter just that little sheet.

Mr. Deegan: I will give him a copy.

Mr. Dykman: So it will be in the record, that is all, that we might have it for convenience.

Mr. Deegan: Yes, I have no objection to that.

Mr. Dykman: It does not go over the page?

Mr. Deegan: No.

The exhibit referred to is as follows:

[fol. 402]

"EXHIBIT 3

"The Woodhaven Gas Light Co.

Jan. 1st.	Mains	Miles	Services, Unit
1897.....	7.45	.....	.....
1898.....	10.32	.....	.....
1899.....	12.46	.....	.....
1900.....	19.55	.....	.....
1901.....	22.93	.....	.....
1902.....	24.72	.....	.....
1903.....	25.26	1,361	.....
1904.....	25.75	1,473	.....
1905.....	27.84	1,621	.....
1906.....	30.15	1,895	.....
1907.....	34.30	2,309	.....
1908.....	36.18	2,793	.....
1909.....	39.28	3,744	.....
1910.....	48.47	4,314	.....
1911.....	56.25	5,050	.....
1912.....	68.34	6,059	.....
1913.....	73.52	6,891	.....
1914.....	80.51	7,568."	.....

Mr. Deegan: That is all.

By Mr. Dykman:

Q. In your examination, your direct examination, you put in a so-called recapitulation of your estimates of the cost of making extensions?

A. Yes, sir.

Q. Your original testimony was that it would cost \$693,931.34; then that was subsequently corrected by you and reduced somewhat; as of what date was that original estimate? June something?

A. As of May, 1919, the market price of labor and material prevailing at that time.

[fol. 403] Q. Since your last testimony upon this subject, has there been any increase or decrease in prices of various materials?

A. There has been considerable increase in both labor and material prices.

Q. Will you state to the Commission what that increase has been?

Deputy Commissioner Glennon: Just pardon me; I did not hear that testimony.

The last four questions and answers were repeated by the stenographer.

A. Shall I give the increases in detail, or shall I just make an answer covering the total cost?

Q. I think more detail that you can give, Mr. White; use your own judgment.

Deputy Commissioner Glennon: I think an answer covering the total is sufficient and then in the event that counsel desires he may cross examine him. Let him judge.

Mr. Dykman: The total is all that you want?

Deputy Commissioner Glennon: Yes, sir; and if counsel for the Commission wants to go into it he can.

The Witness: May I state to the Commissioner, then, my total cost for the extension of labor and materials covering the work, May, 1919, amounted to \$693,931.31.

On a recent examination I have made of this estimate, after consulting the market, both for material and labor, I find now that the total cost would be \$907,191.53.

Mr. Dykman: Adopting your suggestion, sir, I will leave the witness there.

[fol. 404] By Mr. Deegan:

Q. The greater part of this increase that you have just testified to, Mr. White, was due to what, labor or material?

A. Both.

Q. The increase?

A. Both, sir.

Q. What was the labor increase?

A. I have not got the total labor increase, but I can tell the difference between the per hour, how the different classifications—

Q. How you make your total?

A. I analyzed it and came down to the different units.

Q. You have not got the details, have you?

A. I have one sheet of it, yes, sir. I can give it in great detail if you want it.

Deputy Commissioner Glennon: I think you ought to go into the detail? That is a difference of nearly \$300,000?

The Witness: Yes, sir.

Deputy Commissioner Glennon: Under circumstances, as long as there is such a difference in your opinion, you may give the details between May, 1919, and March, 1920.

The Witness: Yes, sir.

By Mr. Deegan:

Q. Give us the details.

A. Do you want me to give it in my own fashion?

Deputy Commissioner Glennon: Simply give it in your own fashion and they can clarify it afterwards if necessary.

The Witness: Taking up the question of material cost per ton on 12, 8, 6-inch pipe, May, 1919, was \$57. March 1st, 1920, the same [fol. 405] size pipe was \$72.30 per ton. The 4-inch cast iron pipe in May, 1919, was \$60 per ton. In March, 1920, \$75.30 per ton.

Pig lead per pound in May, 1919, was .0525. In March, 1920, .0925.

In yarn, there is a reduction—

Deputy Commissioner Glennon: What do you mean, per pound?

The Witness: Yes, sir.

In yarn there is a reduction. In May, 1919, it was 11 cents per pound. In March, 1920, 8 cents per pound.

Spruce timber in May, 1919, was \$60 per thousand. In March, 1920, \$75 per thousand.

Those are the principal items of material that enter into the main extensions.

I will now go on the service material. The one-inch and a quarter material of pipe in May, 1919, was .1587. In March, 1920, .1546. That was a slight reduction.

Street L's, Street T's, T's as might be used on extensions of service, in May, 1919, was .0975 per pound. In March, 1920, it was .1001 per pound.

Inch and a quarter plugs in May, 1919, was .02600. In March, 1920, it was .0320.

Couplings in May, 1919, was .0630. March, 1920, was .1260.

That concludes the service material.

Meter material in May, 1919, 5-light meters, was 9.996. In March, 1920, 9.60.

Three-quarters steel pipe in May, 1919, was .05405. In March, 1920, it was .054855.

The 5-light meter shut-offs in May, 1919, was .405. In March, 1920, it is .60.

[fol. 406] Lead pipe per pound in May, 1919, was .065, and in March, 1920, it is .105.

Elbows and T's per pound in May, 1919, was .0975, and in March, 1920, is .1001.

Street L's per pound in May, 1919, was .15 and March, 1920, .1540.

Nipples in May, 1919, were .0204, and in March, 1920, it was .0258.

Plugs in May, 1919, were .0156, and in March, 1920, was .0192.

Reducers per pound in May, 1919, was .15, and in March, 1920, it is .2460.

Three-quarters couplings in May, 1919, were .03, and in March, 1920, it is .06.

The 5-light caps and swivels in May, 1919, were .0775 and March, 1920, they were .337.

Taking up the labor, I find that the gang foreman——

By Mr. Deegan:

Q. Just a minute, while I think of it, could you tell us the total per cent. of increase in pipes?

A. I have not figured on it.

Q. You have not figured that out?

A. It could be figured out, but it will take longer than this way.

In taking up the labor, I find that the gang foremen in May, 1919, were paid \$4.1532 per day.

Deputy Commissioner Glennon: What is that, \$4.15, practically?

The Witness: \$4.15 per day. That is on the hourly basis. That is the reason it is that way.

In March, 1920, \$5.4534 per day.

[fol. 407] The assistant foremen in May, 1919, were paid \$3.8056 per day, and now paid in March——

Deputy Commissioner Glennon: \$3.08 a day in May, 1919?

The Witness: \$3.80 per day.

Deputy Commissioner Glennon: Oh, 80 cents?

The Witness: Yes, sir.

In March, 1920, paid \$5.0133 per day.

Caulker in May, 1919, \$3.4750 per day, and are now paid in March, 1920, at the rate of \$4.6755 per day.

Yarners in 1919 paid \$3.0271 per day, and in March, 1920, paid \$4.1446 per day.

Tappers in May, 1919, were paid \$3.1818 per day, and in March, 1920, they were paid \$4.2100 per day.

Laborers in May, 1919, were paid \$2.75 per day, and in March, 1920, were paid \$3.8189 per day.

By Mr. Deegan:

Q. Now that price of cast-iron pipe is fluctuating, is a fluctuating thing, isn't it, Mr. White?

A. It used to be, yes, sir; it don't seem to be now.

Q. As late as last May, you testified that certain sized pipe was \$60 and another size \$57 a ton, and then in July you came in and amended your estimate because the price of pipe had been reduced from \$60 to \$54 for a certain size and from \$57 to \$51 for a certain size?

A. I did, yes, sir.

Q. So that now it is going up again?

A. Yes, sir.

Q. It is not a constant thing; you are not sure whether it will continue at this price?

[fol. 408] A. That is largely in the nature of a prediction, which I would not venture to say.

Mr. Deegan: That is all.

Mr. O'Connell: May I ask a few questions?

Deputy Commissioner Glennon: Yes.

By Mr. O'Connell:

Q. Under the present conditions your company would not feel warranted in going ahead with this extension; is that correct?

Mr. Dykman: We concede that, Mr. O'Connell. Otherwise we would not be here, we would be digging.

Mr. O'Connell: May I ask the witness a few questions? I just wanted to lead up to another question.

Deputy Commissioner Glennon: Yes, let him ask the questions.

The following question was repeated by the stenographer.

"Q. Under present condition your company would not feel warranted in going ahead with this extension; is that correct?"

A. That is correct, yes, sir.

Deputy Commissioner Glennon: When you say "this extension," that refers to the extensions in the various localities?

Mr. O'Connell: Yes, covered by this proceeding.

By Mr. O'Connell:

Q. Would your company be willing to surrender your franchise [fol. 409] covering this territory in order to enable another public service commission to go ahead with this extension?

Deputy Commissioner Glennon: Public service corporation, you mean?

Mr. O'Connell: Yes, sir.

Mr. Dykman: I object to that as utterly irrelevant, incompetent and immaterial, and highly improper in this proceeding.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: I respectfully except. The witness has not been proved even to be an officer of the company.

A. I do not know what action my company might take if such a question was asked.

Q. Has that question ever been before the company for consideration, to your knowledge?

Mr. Dykman: I object to that on the same ground.

Deputy Commissioner Glennon: Objection overruled.

Mr. Dykman: Exception.

A. I do not know.

Deputy Commissioner Glennon: Is that all, Mr. White?

The Witness: That is all I have, sir.

Deputy Commissioner Glennon: I think counsel may want something else.

Mr. Deegan: No, I have nothing else to ask him now. I will call Mr. Randolph.

WILLIAM W. RANDOLPH, recalled as a witness, having been previously duly sworn, testified further as follows:

[fol. 410] By Mr. Deegan:

Q. Mr. Randolph, have you, since the last hearing, found what your appraisal was in the original Fourth Ward cases?

A. I have the original estimate with me.

Q. I beg your pardon, I could not hear you.

A. I have the original estimate with me.

Q. Tell us what it was for street mains as of December 31st, 1913?

A. The Woodhaven street mains, \$178,440.72.

Q. The paving of the mains?

A. \$1,482.84.

Q. Services?

A. \$109,583.04.

Q. The paving of the services?

A. \$3,813.84.

Q. Consumers' meters?

A. \$112,461.95.

Q. Meters in stock?

A. \$3,000.

Q. Your working capital as of that time was what?

A. \$40,000.

Q. Don't you think it would be fairer, Mr. Randolph—

A. Excuse me just a minute, you have omitted one item that I had before, office furniture and fixtures.

Q. You did not include that in this case at the time of your present appraisal?

A. No.

Q. That is why I did not ask you about it. Don't you think it would be fairer, Mr. Randolph, in estimating the value of this property, of reproduction cost new, to take the prices existing at a time before this abnormal increase?

A. No.

Q. You think that these prices which you have given here are the proper prices to take for the value of this property in the reproduction new theory?

A. Yes, sir.

Q. You know of course that the company never—that the investors never sacrificed anything like the amount you have given here as the value of the property?

A. I do not believe I understand what you mean by the word "sacrifice."

[fol. 411] Deputy Commissioner Glennon: "Sacrifice," I do not understand that either.

Q. The amount of money that was actually invested?

Deputy Commissioner Glennon: You mean invested?

Mr. Deegan: The amount of money that was actually invested in the company is not at all commensurate with the value which you have now given?

The Witness: In dollars and cents?

Mr. Deegan: Dollars and cents is what I mean.

The Witness: As far as an old dollar, I am not prepared to say; I do not know. The dollar today is not the dollar of the past. It has the same name but a different value.

By Mr. Deegan:

Q. Do you know what the dollar and cents amount that was originally invested in this property was?

A. I do not.

Q. You never made any inquiry?

A. No.

Q. Never made any examination of the books?

A. No.

Q. You did not look at all the books to find out what the book cost was at all?

A. No.

Q. Do you always in valuing property use this reproduction new basis?

A. In order to get present value of it, I do.

Q. You have always done it in valuing property, is that true?

A. Yes, sir.

Q. Would you do it if, for example, the prices should be reduced [fol. 412] within the next three or four years, if you were to make an appraisal at that time, if the prices would be reduced say 100 per cent. would you then use the reproduction new theory?

A. If I were asked to give the present value on the reproduction basis, I would.

Q. Even though it might be considerably below what the actual amount invested in the property had been?

A. Yes.

Q. Since your graduation from Stevens Institute, you have been connected mostly with public utility companies, isn't that a fact?

A. Not altogether. I have probably spent most of my life in connection with the industries that are called public utility industries, but I have gone considerably outside of them in my work.

Q. Were these public utilities that you have been connected with, most of them were either gas or electric companies?

A. Gas, electric, railway, steam heating plants, and natural gas. Probably—I do not think that you would call that a public utility until it gets into the city.

Deputy Commissioner Glennon: What is the point, Mr. Deegan?

Mr. Deegan: I am leading up to something.

Deputy Commissioner Glennon: All right.

Mr. Dykman: I am surprised.

Mr. Deegan: It may be more of a surprise than you expect.

By Mr. Deegan:

Q. Have you ever appeared for public authorities?

A. No.

Q. How often have you appeared as a witness in rate cases?

A. I could not tell you exactly the number. I have been in the [fol. 413] Mott Haven, the Richmond Hill, the Jamaica gas case; the Paterson and Passaic rate case, the Perth Amboy, N. J., rate case, the Syracuse rate case.

Q. Have you always appeared for the public utilities?

A. Always.

Q. Now in valuing the property of the Woodhaven Company in this case, you have not in any way considered the age of the mains?

A. No.

Q. Have you other cases in which you have given consideration to the age element, and have you considered the question of depreciation?

A. Why, in a number of cases where it has been specially requested by the company's attorney I have given consideration to depreciation.

Q. And have you made a deduction and allowance for depreciation?

A. Yes.

Q. You did that in the Kings County Lighting Company case, didn't you?

A. As I recollect it, I did. I would have to review it before I spoke very definitely on that subject, however.

Q. You were a witness in that case?

Mr. Dykman: May I have the name of it?

Mr. Deegan: Yes.

By Mr. Deegan:

Q. You were a witness in the case of Mayhew vs. The Kings County Lighting Company, which was a hearing involving rates of the Kings County Lighting Company, held before this Commission?

Mr. Dykman: When was that; what year?

Mr. Deegan: 1911.

Q. According to the typewritten minutes of the hearing of June 22, 1911, you were cross examined by the Assistant Counsel to the [fol. 414] Commission, Mr. Semple. Do you remember whether these questions were asked you, and if you made these answers? This was referring to the service, on page 838:

"Q. And the age of them?

"A. And the age, I took that into consideration in this way: I assumed that the age of the service was something like proportional to the age of the meters.

"Q. Yes.

"A. That is, taking the number of meters installed each year, and getting an average life in that way.

"Q. Then you used that age in fixing your depreciation upon the services?

"A. That was an element."

Do you remember whether those questions were asked of you, and that you made those answers?

A. Yes. They sound all right to me.

By Deputy Commissioner Glennon:

Q. What is your answer?

A. They sound all right to me. I would have to read the whole text probably—

Q. You would say the same thing today if you were so questioned, wouldn't you?

A. Yes. Your ideas in these cases develop as you go along and get more experience, but I do not know where that leads to. As far as he has gone, I would say the same thing.

By Mr. Deegan:

Q. On page 839, you were asked this question:

"Q. Then you did consider the age of the services?

[fol. 415] "A. Yes, in a way I considered the age of the mains. I do not mean to say—because I put some depreciation on that. As nearly as I could see, the services were probably four and a half years old, and the mains were in the neighborhood of 13.

"Q. Average?

"A. Average."

In this case you did not attempt to find out what the age of the mains and services were?

A. No.

Q. You did not take that into consideration at all?

A. I did not take that into consideration because the theory upon which it was to be done was new. The theory upon which I was to

make it was that it was worth its value new, irrespective of depreciation.

Q. Do you remember the theory which was used in the Kings County Lighting Company case? Was it a different theory than the reproduction cost new?

A. My recollection was that counsel desired the depreciation deducted.

Q. That is why you did it?

A. Yes, sir.

Q. Again, at page 910 of the record in that case, do you remember this question being put to you by Commissioner Maltbie, and making this answer:

"Commissioner Maltbie: How did you determine the depreciation on the mains then?

"The Witness: I put an arbitrary depreciation there of about 10 per cent on it. The life of cast-iron pipe—the life of it is variously estimated by people at from 50 to 100 years. Personally, I do not know whether it is 100 years or 200 years. I have seen pipe that is 40 [fol. 416] or 50 years old that I really could not detect deterioration in, and that is an arbitrary depreciation figure which is based on the fact that I know it is 13 years old, and from consideration of what I have seen of it and what I generally know of cast-iron pipe, I think that that depreciation that has taken place up to the present time would not exceed that."

You were further asked on the same page by Commissioner Maltbie——

Deputy Commissioner Glennon: Do you want an answer to that, or is this the whole——

Mr. Deegan: I think the question was whether he remembers that question and answer.

Deputy Commissioner Glennon: Did you so testify in that case?

The Witness: Yes, sir.

By Mr. Deegan:

Q. And further:

"Commissioner Maltbie: You have not taken into account any depreciation then due to obsolescence or inadequacy?

"The Witness: No.

"Commissioner Maltbie: Does not experience show that there is depreciation due to both of those causes?

"The Witness: In some cases."

Q. Do you remember so testifying?

A. Yes. If you read Commissioner Maltbie's conclusion there on the life of cast-iron pipe, I think he followed me up on that.

[fol. 417] Q. No, I do not remember, Mr. Randolph, noticing that. Don't you also, or didn't you in that case, make provision not only

for depreciation in the past, but also for probable depreciation in the future?

A. I do not think so.

Q. Wasn't this question asked you, and didn't you make this answer, on page 918 of the record in that case? I should say, page 921:

"Q. Well, we will go on to the question of what you speak of as future depreciation, which I think, in your testimony, you estimated to be smething like \$75,000 a year. Is there any inadequacy, age or obsolescence in there?

A. Yes. That was a general judgment figure, without making it up in detail or without making it based on age."

Q. Did you so testify?

A. I think so.

Q. Did you not then recognize future depreciation at that time?

A. Yes, I have always recognized——

By Deputy Commissioner Glennon:

Q. You still recognize it, is that what you mean?

A. Yes.

Mr. Deegan: He made allowance for it in that case?

The Witness: That was in connection with the operating expenses.

By Mr. Deegan:

Q. What is your theory about making allowances for it in the operating expenses?

A. I think it is good judgment to do it.

[fol. 418] Q. I beg your pardon?

A. I think it is good judgment to do it. If a company had operated beyond the age of all of its apparatus and they were renewing so that the renewals practically took care of all the depreciation, there would not then be a necessity to do it. But I think a fund should be collected, a liberal fund should be collected by any process, and call it depreciation, nothing else, and allow that to accumulate until in the judgment of the people operating it it is large enough to be safe to meet the contingencies which seem about to arise, and then readjust that amount from time to time when developments have taken place in the now future and then present.

Q. Your idea then is that it is proper to make a deduction from income from operating expenses and put in ~~the~~ reserve to take care of the replacements?

A. Yes.

Q. Yet you do not, in valuing the property, make any deduction for the depreciation?

A. I do very often make, where I am requested to present value the new less depreciation, make a depreciation estimate.

Q. Have you even done that in this case.

A. I have not any figures that I have presented.

Q. Do you agree with this statement by the Court of Appeals in this opinion in the case of the Kings County Lighting Company vs. Harris, 156 Appellate Division, 603?

Mr. Dykman: The Court of Appeals?

Mr. Deegan: The Appellate Division.

Q. In that case it had been contended that there was no depreciation in the property for the reason that it should be maintained [fol. 419] when the rate plus the cost of operation and the efficiency of the property continued to be 100 per cent. That is your theory, as I understand it, upon which you valued the property here?

Mr. Dykman: I object to this.

Deputy Commissioner Glennon: I sustain the objection.

Mr. Deegan: I think it is a perfectly proper question.

Deputy Commissioner Glennon: I sustained the objection.

By Mr. Deegan:

Q. In making your estimate as to the value of the services, you took the service from the mains to the house?

A. Yes, sir.

Q. You included the entire cost?

A. Yes, sir.

Q. Would it make any difference in your opinion if you knew that it was the practice of the company to charge the consumer with that part of the services upon his premises?

A. Without giving a yes or no answer right off, I will explain it just a little bit. My theory has been in the past that if a consumer was charged in part or in whole for that portion of his property and the company renewed the services at the company's cost to maintain that, that it was proper for the company to get a return on that. That was an asset.

Q. You do not know in this particular case whether the services were in use on that property?

A. I have heard some testimony to the effect that, I think Mr. White in the previous case testified that for several years, to the best of my knowledge, something like that, the company had charged [fol. 420] 15 cents regardless of the charges for laying the service on a consumer's property. Now how long that continued, I am not sure, but I think it continued up to very nearly, up to the time of this case.

Q. Did you hear him so testify today?

A. I heard him testify, but I was so far off I could not hear the details. I did not hear the dates. I understand now that there is a different scale of prices.

Q. Do you consider that the pipe of the consumer's premises is the company's property after it had been originally paid for by the consumer?

A. For all intents and purposes of a rate case, I think that is a reasonable assumption providing the company maintains the pipe.

Q. Do you think the company owns that pipe?

A. I believe that there are—have been cases which say the consumer has a right to permit another company to connect to that pipe, even though the company paid for the full service, so long as it is connected inside of his property lines.

Q. What is your answer to my last question?

The following question was repeated by the stenographer:

“Q. Do you think the company owns that pipe?”

A. No.

Q. Now in your appraisal of the meters, you did not include, as I understand it, any of the cost of installing the meters, or is that included? I am referring to Exhibit 30.

Deputy Commissioner Glennon: Could you answer that yes or no?

[fol. 421] The Witness: I am looking up the details to see how I handled it. No, I did not. I omitted service to meter, from meter to house, including labor and material.

Q. In making the allowance of 20 per cent for overhead, Mr. Randolph, did you make any inquiries as to what the actual experience of this company was?

A. No.

Q. You took this regardless of what the books might show?

A. Yes.

Q. On what did you base your allowance?

A. I based it on my past experience, and what I thought, if it was reproduced new, it would cost for these items.

Q. Did you have any experience with the company at its inception in developing it?

A. Yes, I have had experience with rebuilding and completing plants—I do not think I have had any experience in that company from its inception, but I have taken the company when it was down and out; you might say it was the re-birth of the company, and built it up.

Q. What company was that that you are referring to now?

A. A small company in North Carolina; Fairfield, N. C.

Q. In building up that property, did you—did the actual cost of overhead actually amount to 20 per cent?

A. I did not keep them that way. I merely drew on my experience in a general way. The books were not kept so that I could say that the overhead percentages on that were a certain amount.

In one particular case where the plant was rebuilt entirely, I had in mind that the overhead expense amounted to about 15 per cent excluding interest.

[fol. 422] Q. Did you include anything in your overheads for contractors' profit in this case?

A. No.

Q. You did for the engineering?

A. Yes.

Q. Did you figure upon constructing this property with the engineering force of the present company, or the parent company, or was your theory that you would have to develop an entirely new engineering organization?

A. Yes.

Q. Or the latter?

A. The engineering force is pretty well occupied with what it is now doing. To reproduce this property, to build this property, in any reasonable time, I think they would need some outside help, or the parent company would in all probability charge the equivalent.

Q. With regard to taxes, which you made an allowance for, do you know whether the company ever paid any franchise tax during the period of construction?

A. I do not.

Q. Now your interest during construction was the greatest amount in the overheads, between 8 to 12?

A. I think they would run between 8 to 12.

Q. In reproducing this property did you consider that it would be continuous, a continuous performance?

A. Yes, sir.

Q. Done within what period?

A. Done within a year and a half.

Q. This company or this property was not built up that way, was it, all completed within a year and a half?

A. Gradually.

Q. Built up gradually?

A. Yes, sir.

Q. It might have taken 10 or 15 or 25 years to build it?

A. Yes, sir.

Q. Isn't it a fact that practically when a main is constructed to immediately put a service, attach a service to the meter and to give service?

A. Yes.

[fol. 423] Q. As soon as possible?

A. Yes.

Q. So that a main will not remain idle for a great length of time?

A. Yes.

Q. What rate of interest did you figure on when taking a year and a half as the time during which it would take to build this?

A. I figured on no exact interest. If you tried to borrow money today for a gas company, or in fact any other enterprise, you would probably have to pay not less than 8 per cent.

Q. Is that the theory that you worked on?

A. No, I do not—I am just telling you what is the condition today.

Q. In reading over your testimony as to the working capital, in answer to a question by counsel for the company, on page 437, you say: "one-half of the additions in mains, meters and services, the quantities averaged over the five and one-half years past totaling \$60,962, and half of that being \$30,481—that would make the total

as of June 30th, 1919, \$63,512." Now isn't that \$60,962 included in your appraisal of the mains, meters, services?

A. Yes, but that is looking to the future.

Q. Wouldn't it be charged to the fixed capital?

A. In the future? I do not understand it. I do not follow you.

Q. I say, wouldn't this amount of \$60,000 be charged for meters, mains and services; wouldn't it be a construction account charged to the fixed capital account?

Mr. Crummey: Do you mean in the working capital, a given amount allowed for construction purposes?

Mr. Deegan: I am asking Mr. Randolph a question now. [fol. 424] The Witness: Let me look at my testimony. I think I can follow you. What page is that?

Mr. Deegan: Page 437; the answer of—

Mr. Dykman: Page 437, the answer, Mr. Deegan on page 437?

Mr. Deegan: Yes.

Mr. Dykman: So that he may have the benefit of your question.

A. Now the 50 per cent there was for material and supplies. Is that the point?

By Mr. Deegan:

Q. No, the next one,—“one-half of the additions in mains, meters and services, the quantities averaged over the five and one-half years past, totaling \$60,962?”

A. That is just based—what that is meant to represent is not anything that I have already not included in the past, but looking forward in the next year; probably was that if they went on they would expend about that sum of money, about \$60,000, by the past for the future. If they spend that much money in the future for the coming year, then I divided that into two for the amount that would be applicable to an interest charge for the full year. In other words, if they did not get that recognition they would not have any return on that part of the investment for at least a year.

Q. In estimating the working capital, don't you simply have to consider the sum that is necessary to meet the operating expenses payable out of the consumers' bills?

A. That is more or less arbitrary as to how you treat it. This working capital, all of those elements were lumped together by me, [fol. 425] believing that you should get a return on the money invested in capital for the next year; at least after the rate case is on, because if you do not, if you have a rate made today, you are going to continue that rate. It is based on sound principles. Then for at least the coming year if you invested \$100,000 you would get no return on it. Take half of that construction for the coming year and throw it in with the working capital. I could just as well treat it as a separate item.

Q. Is that included in any way as an operating expense?

A. No, that would be when it was spent; then it would get into capital.

Q. Is it proper to include in working capital amounts which are intended for construction purposes, which are charged to the capital account?

A. They have not yet been charged to the capital account. You are getting technical on probably what "working capital" is, and there is no fixed rule as to exactly what working capital is. The company has got to provide money for this capital extension.

Q. Now how is that money raised? Is it not raised from the revenues, from income or the issuance of securities?

A. It is often raised from the—if the company is in a position to sell securities it is raised from the issuance of securities.

Q. And that is a proper capital account charge?

A. That is a proper capital account charge, but you will never get a return on the capital expended in that year unless in some way you take into consideration that proposition, and for that reason I did not try to conceal it at all because it is explained in the minutes. I took half of it.

Q. It does not——

[fol. 426] Deputy Commissioner Glennon: He is trying to complete his answer. You took half of it?

The Witness: I took half of the probable capital that would be expended for a year from the time that I made my valuation.

By Mr. Deegan:

Q. Does not interest during construction cover that matter?

A. No, because interest during construction applies to the past.

Q. To the early part, the early history of the company?

A. Yes; but what I have put a value on, this is not valuing something that is already included, but it is in an effort to give an expression to that money which is to be raised and expended for the coming year.

Q. Do you know whether it is customary to include an item like that in working capital?

A. I have sometimes done it, and I have sometimes done it as a separate proposition.

Q. I notice at the last hearing, on page 435, in answer to a question by Mr. Dykman:

"Q. These tabulations, Mr. Randolph, represent your estimate of the cost of reproducing the quantities of material furnished you by Mr. White?

"— — —"

"Q. As being now the capital investment of the company?

"A. Yes."

Will you please explain what you mean by that? The capital investment of the company?

A. Well, everything that I have said before shows that I meant the reproduction cost, the cost of reproducing it. Now there is—I do not mean that it is—it is what is termed capital as belonging to

[fol. 427] the company, because there is no such capital there. That represents their stocks, bonds, or other securities. I think to have a clearer definition on that, I refer you to Mr. Dykman.

Q. But you did not mean, of course, that this was the amount of money actually invested by the company in this property?

A. Certainly not. I would like to go on there as being now the capital investment. However, I understood that to mean at that time the proper amount that could be represented by capital.

Q. On your theory of reproduction cost new?

A. Yes, sir.

Mr. Deegan: That is all.

Deputy Commissioner Glennon: All right.

By Mr. Dykman:

Q. Upon this question of depreciation, would a difference of locality make any difference in your mind as to the possible depreciation of the pipe, the quality of the soil, for instance?

A. Yes.

Q. Do you know of any difference between the soil of the Kings County territory and the Woodhaven territory?

A. Why, there probably is some difference. The Woodhaven territory is good soil. The Kings County is good soil, as I recollect it. Figuring 10 per cent on 14-year pipe is ridiculously excessive, but it is purely arbitrary. It was taken as a—not as representing age, or as representing what I really thought it had depreciated. Very liberal on the subject of depreciation when it came down to an arbitrary figure.

Q. You testified at the last hearing while you were on the stand, as I recall, at some length as to the character of the soil in the [fol. 428] Woodhaven territory; and my recollection is that you said it was quite preserving?

A. Yes, it is good soil. In my previous testimony we followed that out with some exhibits of pipe, cast iron pipe that was taken out, very old. I cannot recollect exactly how old, but it seems to me it was put in early in the 70's, and it showed no depreciation. In my testimony there the Commissioner followed me up and wanted to know if I could tell the age of the pipe, whether it would last 50 or whether it would last 100 years, and finally, then, if it would last forever. I said "forever is a very long time," and we allowed it to drop at that point.

Q. Is that the question of Commissioner Maltbie's that you answered Mr. Deegan on?

A. Yes, sir.

Q. In other words, in that very case he pressed you to concede that pipe might last indefinitely?

A. Yes.

By Mr. Deegan:

Q. Just in connection with that, you just stated that you thought 10 per cent is a ridiculously high figure. I think that was your expression?

A. Yes, for the pipe in the Kings County Lighting case

Q. The Kings County Lighting case?

A. That was 14 years old.

Q. 13 years old?

A. 13 years old.

Q. Do you remember this question and answer by Commissioner Maltbie, page 919:

"Commissioner Maltbie: And that depreciation in the case of mains is about 10 per cent in 13 years?

[fol. 429] "The Witness: The depreciation that I find is 10 per cent. Now, there may be a great deal more than 10 per cent that has taken place in that 13 years. There may have been a great deal of this small main that you referred to that is abandoned, that I have not taken cognizance of. In that case that would be 100 per cent depreciated, because I have not included it in my value new. Consequently it is taken care of in the 100 per cent depreciation."

Did you so testify?

A. I think so.

Mr. Deegan: That is all.

Mr. Dykman: I do not think there is any use of retrying that case.

Deputy Commissioner Glennon: That is all, Mr. Randolph.

Mr. Deegan: I will call Mr. Mitchell.

R. H. MITCHELL, recalled as a witness, having been previously duly sworn, testified further as follows:

By Mr. Deegan:

Q. Mr. Mitchell, since the last hearing have you prepared any appraisal of the present property of the Woodhaven Gas Light Company?

A. I have.

Q. Will you explain on what basis you prepared the appraisal?

A. I have prepared a revised appraisal of the distribution system (mains, services and meters), devoted to gas operations in the franchise district of the Woodhaven Gas Light Company.

[fol. 430] This revision is based on the findings in the case—Cases 1787 and 1807—by the Commission, which was known as the Fourth Ward rate cases.

I have taken the normal reproduction cost as of December 31st, 1913, which was at the time of the rate case \$438,635, which is in

conformity with the Commission's finding, which was used as the basis for the determination of the rates at that time.

In conformity with the opinion of the Commission, I have allowed, made a certain allowance of meters that were allowed by the Commission, due to the fact that the Commission from the evidence drew the conclusion that the Commission's engineers were rather low on some allowances. That amount was \$7,470, making the total physical property as of December 31st, 1913, \$446,105.

There was an additional allowance made for interest during construction, overheads charged to capital and working capital for the entire three companies in the Fourth Ward of Queens. I have assigned the pro rata of the amount on a dollar for dollar basis on the Woodhaven Gas Light Company, and it amounts to \$57,550, making a total normal reproduction cost as of December 31st, 1913, of \$503,655.

Retirements during the—retirements made to property during the period 12/31/13 to 12/31/19, \$18,877, leaving the total reproduction cost of the property installed prior to 12/31/13 and in place in 12/31/19, of \$484,778.

The cost of additions shown by the books of the company since December 31st, 1913, to December 31st, 1919, or \$197,031, making the revised total in regard to the reproduction cost as of December 31st, 1919, of \$681,809.

[fol. 431] I recomputed the depreciation on the basis of the straight line, a method in conformity with the findings in the Fourth Ward rate case, and the revision of depreciation on that basis is \$101,282, leaving the normal reproduction cost today less depreciation, of \$580,527.

Q. What annual depreciation figures did you allow?

A. The annual depreciation figure based on the rates accepted by the Commission in the original proceeding computed today amounts to \$10,323.

Mr. Deegan: When Mr. Mitchell has given us all of the prices on this sheet, and as a summary I would like to have this marked in evidence.

Deputy Commissioner Glennon: No objection to that being marked in evidence?

Mr. Dykman: None whatever.

The paper was received in evidence and marked Commission's Exhibit No. 32 of this date.

Mr. Deegan: That is all.

By Mr. Dykman:

Q. I notice that this Exhibit No. 32, Mr. Mitchell, has the words "tentatively revised appraisal." What do you mean by the word "tentatively"?

A. Well, tentative to the extent that certain retirements have been made to the property since the date of the original appraisal,

and in the time that I had to prepare this it was difficult to just ascertain what your groups of particular items, of mains retired in service, likewise meters, came out of, which would result in changing the average age of the property installed prior to December 31st, [fol. 432] 1913, which is still in place today; and I have had to use short cut methods in order to ascertain what the effect would be on the original age of the old pipe due to the retirements made during this period.

Q. Are you finished?

A. I might say further on that point that the retirements are—was so light in proportion to the total property they represent, approximately $3\frac{1}{2}$ per cent of the original appraised value as determined by the Commission. They were taken out of the age groups on an average basis without identifying each and every piece of main that was actually retired by the company.

Q. Now just what do you mean by “short cut methods”? Is it a short cut method to take the findings of the Commission in 1913 and build up on that?

A. No; no short cut methods on changing from the original basis of the Commission. I have injected no new element into the determination of these figures. These figures are entirely predicated on the procedure laid down in the original rate case.

Q. My understanding is that you have taken the figures found by the Commission in one of these Fourth Ward cases, and you have put additions on that?

A. Yes.

Q. And arrived at the present figure?

A. Yes.

Q. Now you spoke of short cut methods and I asked you what short cut methods you adopted?

A. The only short cut method that I might mention is in obtaining the average age of the present property in place, which was installed prior to the date of the old appraisal. That necessitates to make a complete revision, to identify each and every item of pipe which has been retired; take it out of its old groups.

[fol. 433] Now today that is a very lengthy proposition, and perhaps if I had done that these figures would have differed by maybe one or two thousand dollars, and to that extent only is it tentative.

Q. That you did not do?

A. No.

Q. Then in that sense it means an omission?

A. Oh, no. Well, I am not—— Do you mean an omission?

Q. I mean on your part in making this appraisal; an omission on your part in making this appraisal?

A. Not necessarily an omission as far as the value goes. It may be that the results will be produced—will produce a higher value than ordinarily if the work was done and the complete revision made. I called it tentative at this time in order if any further questions should arise, I would have the benefit of making corrections.

Q. I see. Now——

A. I will say here that I am very candid in my mind whether

based on the original findings in the old case if a rate procedure was followed, whether the results obtained would differ more than \$2,000 from the findings I have here.

Q. Where did you get the figure on that property, \$438,635?

A. From the original findings in cases 1787 and 1807.

Q. Did the Commission make a separate finding for the Woodhaven Gas Light Company in that case?

A. Schedules were set up and included in the opinion. Strike that out. Schedules put in evidence by the Commission's engineer at that time set up the figures for the three companies independently. The exhibits were put in separately for each company.

Q. Is that where you got your figures \$438,635 from, those schedules?

A. Yes.

[fol. 434] Q. That is hardly a finding of the Commission, is it?

A. I would have to refresh my mind. I would say it is in conformity with the findings of the Commission.

Q. Don't you know now where you got this figure from, Mr. Mitchell?

A. It comes from Exhibit 63 in case 1787.

Q. Have we got it here?

Mr. Deegan: I think it is in this pile here.

Counsel looks through papers.

Q. I notice here, Mr. Mitchell, in this printed case, Exhibit 63, it has down in the corner, "Computer, W. F. H. Checker E. B. Mc." I presume that there won't be much question but that that is a computation of Mr. Hine, formerly an engineer with the Commission?

Mr. Deegan: Yes.

Q. Consequently you take this figure, Mr. Mitchell, from one of Mr. Hine's exhibits?

A. Yes, sir.

Q. The next item there is "Extra allowance for meters in conformity with"—I assume that you took that from the written opinion of the Commission; that is the second item?

A. That does not appear as an individual item in the opinion. There is a total figure price as an extra allowance by the Commission for meters in connection with the entire three companies; that is, for the three companies involved in the Fourth Ward cases. I have taken the allowances made by the Commission and assigned to the Woodhaven Gas Light Company the pro rata allowance that would go to the Woodhaven Gas Light Company based on the relative investment of the Woodhaven Gas Light Company in the matter of meters as compared with the total investment of the three companies.

Q. Where did you get that meter investment of the Woodhaven Gas Light Company?

A. I would not say that exactly is the meter investment. That is the total appraised value by the Commission engineer of the gas meters of the Woodhaven Gas Light Company.

Q. Now the next item is evidently an addition of the first two, is that right?

A. Yes, sir.

Q. And you call that "physical property 12/31/13?"

A. Yes, sir.

Q. Do you make a distinction then in the words between normal reproduction cost and physical property?

A. No, it is the normal reproduction cost of a physical element in the total value.

Q. Now what do you mean by normal?

A. By normal, I mean reproduction on the basis of an average for normal figures, taking into consideration the prices of labor and material existing at the time the construction work was performed and the general conditions existing as to the way the construction work was performed by the company.

Q. Well, you say the average of what; how do you get your average?

A. Why, the average in the case of prices that fluctuate, to determine an average, you would necessarily have to construe—to consider the fluctuations existing over the years during which the property was constructed and the relative amounts of construction work performed in the various years, as represented by the particular property in place today.

Q. Then to get your so-called normal rate reproduction cost, would you strike an average by taking all the years during which the company had been in existence?

A. I would weigh up in proportion the amount of construction work performed. I might say right here that I am not defining—I am not defining my ideas of normal reproduction cost in answer to your question. I am not—

Q. That is what I want you to do.

A. I am not defining the value of \$438,635, which was a finding of the Commission.

Q. Now my understanding of course, so far as we have that figure, is that it is merely the opinion of Mr. Hine; you speak of it as a finding of the Commission. But so far it is the opinion of Mr. Hine; his exhibit?

A. And his testimony of course, is a matter of record.

Q. His testimony is a matter of record, yes. Now you have accepted Mr. Hine's figures?

A. Yes, sir.

Q. And you told me by "normal reproduction cost" you mean an average over all the years during which the Woodhaven Gas Light Company has been in existence?

A. That is what I would testify to in taking the—when you asked the normal value I so considered it.

Q. Exactly. Now do you know whether that was Mr. Hine's opinion?

A. No; I can give you Mr. Hine's testimony.

Q. Do you know whether it is or not? I do not want to try

that case all over again. Do you know whether that was the theory upon which Mr. Hine's proceeded in arriving at those figures?

A. As near as I can absolutely say, the figure represented here, as prepared by Mr. Hine, represents the reproduction cost of the normal or average prices, and his testimony on that point was, at the time that he appraised, he used those prices which did not fluctuate. [fol. 437] He took the prices then prevailing for those items of property which did not seem to fluctuate. But those figures, those prices which did fluctuate, he took the 5-year average price.

Q. Well, the Woodhaven Gas Light Company has been in business more than five years?

A. Well, those five years were taken as a representative five years. As I recall—of course I am testifying from hearsay purely—but my recollection of the situation was—

Deputy Commissioner Glennon: Hearsay as to his testimony?

The Witness: Yes.

Mr. Dykman: It is purer here than anywhere else.

The Witness: I can well say the proceeding of the Commission, which had been materially changed—I shall take it upon myself, the weight of testifying, having performed twelve years of service in this Commission in many proceedings, rate proceedings.

Mr. Dykman: I know that.

The Witness: The policy of the Commission in proceedings at that time, the basic proceeding of the engineers, accountants, lawyers, was on the basis of normal reproduction, considering the average normal prices; rather the reproduction on the basis of average or normal figures to get the original cost theory. That is the general trend of the Commission's proceedings, or you might call it the new investment theory.

[fol. 438] By Mr. Dykman:

Q. First, Mr. Mitchell, we had an average taken over all the years during which the company was in existence; now we have an average over five years. Now I understood you to say that the normal reproduction cost as you would use those words, would mean the average over all the years during which the company had been in existence. Now if I misunderstood you, correct me. That is speaking entirely independent of this figure?

Q. Entirely independent, how you use those words?

A. But if I had found in preparing this case originally that the results of my examination of the average and normal prices over a great period of years during which construction work had actually been performed, had led me to the conclusion that perhaps the best weighted average units we could get would be those predicated on the last five years, which perhaps would give me just a fair unit as if I weighed the entire period. I might say the use of the 5 years average—now whether that in this case in connection with the mains, meters and services of this company is so, I am not in a position to testify.

Deputy Commissioner Glennon: When you say "in this connection," you are referring particularly to the Woodhaven Gas Light Company?

The Witness: Yes, I am referring to the Woodhaven Gas Light Company.

By Mr. Dykman:

Q. You don't know, Mr. Mitchell, whether the whole period of its existence should be taken, or five years? Do I so understand you? [fol. 439] A. Why, I would say that it may be that the engineer in charge of the preparing of this figure found five years average, which he testified to, would give him a sound basis for unit prices, as if he had taken into consideration the unit prices over the entire period.

Q. But you do not know, of course?

A. Of course I do not know the findings.

Q. But I have gotten from your testimony that you think that he refers to a figure obtained by an average of all the years that the company has been in existence?

A. Yes, I would in normally considering the case. It may be that these figures absolutely produced that very result.

Q. Of course, it may be; that would be more or less imagination. Now in spite of that opinion, I understand that your testimony to me in working for the Commission, you are in the habit of taking a period of five years generally?

A. No; that is, there is no fixed rule in the Commission, I would say, on procedure. I am using the 5-years figure of Mr. Hine—that Mr. Hine prepared the original appraisal and used as his figure.

Q. Don't you use the five years, as a matter of fact?

A. Not necessarily.

Q. Do you use three or seven?

A. It all depends on the fluctuation in prices.

Q. It depends whether they are up or down?

A. No, it does not, because the attempt has always been to arrive at a unit price which would consider the relative amounts of construction work performed in order to approach a basis of actual cost.

Deputy Commissioner Glennon: In other words, to get at the truth?

[fol. 440] The Witness: To get at the actual sacrifice of the company, Mr. Commissioner.

I might say further that the testimony in this case, in reading it, in the opinion written, that the Commission was very well satisfied that the figures that Mr. Hine prepared at that time were higher than an examination of the actual cost, as shown by the companies' books, and therefore used the gas engineer's figures prepared as a basis for the rate in that case.

By Mr. Dykman:

Q. Mr. Mitchell, this first figure, normal reproduction cost 12 31/13, that was arrived at by an average of the years prior to 1913?

A. Yes, sir.

Q. Now that is seven years ago; there has been a great increase in the prices since, has there not? In the units making up this figure?

A. Yes, there has been.

Q. Would not your average for the seven years since 1913 or for any five of those seven years, be considerably larger than for the years prior to 1913?

A. Yes, they would.

Q. What unit price have you used for the iron pipe, Mr. Mitchell?

A. I have not those details with me on that point. Do you refer to the original normal figure? They are all a matter of record in the original case.

Q. No, I mean in making up your additions, in both, of course. The particular question now is as to the making up of your additions.

A. I have not the extensive details to give you on that. They are all available. The additions are reflected on the companies' books. You can verify the statements of the companies' officials and the [fol. 441] original appraisal as of December 31st, 1913—all those units are in the original finding of the case.

Q. You have the sustaining data, as you call it?

A. Yes, very large sustaining data.

Q. Which I assume we may have access to?

Mr. Deegan: Yes.

Q. Mr. Mitchell, you introduced here—my copy has not got the number; I think it is Exhibit No. 23, a blue print, a blue print which you called "comparative results of three studies prepared by the Public Service Commission engineers showing the estimated cost of construction, system of gas transmission, distribution to service, Springfield district;" do you remember that?

A. Yes, sir.

Q. There was some correction in the figures which I never got, but I think it was a slight increase in one of the tables, was it not? Do you recall? My copy has not the correction on it.

A. There was a corrected copy prepared which I believe was marked in evidence.

Q. Do you recall now so I will be straight in these questions asked? There was a slight increase in one of your tables?

A. I could not say now. The study is rather complicated.

Mr. Deegan: There were some changes; I am not able to lay my hands on it just now; I will get it and give Mr. Dykman a copy.

Mr. Dykman: I want to know what they are.

Q. Now, Mr. Mitchell, you made three studies here, one of the entire territory, \$644,898.84?

Witness looks at blue print.

[fol. 442] A. Yes, sir.

Q. That figure exceeds the normal reproduction cost, \$1,231.19, as given on your last exhibit, doesn't it?

A. It apparently does.

Q. It is a matter of mathematics?

A. Yes, sir.

Q. Your second figure is \$443,659.09; that is your second study?

A. Yes, sir. I will take it for granted that the figures that you are reading are correct.

Q. Mr. Deegan will police me. That represents your conception, I think, of the Commission's gas committee; I think that was what you said it was?

A. Well, I said the No. 2 was a study striking out the outlying districts and endeavoring to include those localities which were—which would show more attractive, a lower investment for the consumer, than some of the remaining sections. Taking those sections which it will be possible to supply without materially interfering with the company's net working mains as proposed by Mr. White in his study, No. 1.

Q. Your third study, which was the product of your own invention, that amounts to \$271,574.71?

A. Yes.

Q. So that, Mr. Mitchell, your own estimate of these three cost figures, the first exceeds your estimates of so-called normal reproduction cost; the second is within \$140,000 of it, and the third is very nearly half of it? It is mathematics; it does not make much difference whether you answer it or not?

A. I am taking for granted your assumptions in reading those figures and your conclusions.

Q. They are there, if you want to look at them.

Mr. Deegan: They are the correct figures.

[fol. 443] A. It is a long time since I have seen the figures.

Witness looks at figures.

A. (continued). Yes.

Q. That statement of mine is correct?

A. Yes.

Q. Where did you get the retirements from December 31, 1913, to December 31st, 1919?

A. The retirements were obtained from the books and records of the Woodhaven Gas Light Company.

Q. You went through the books and this is your estimate from them?

A. Yes.

Q. Now we come down here to depreciation, Mr. Mitchell; what figures did you use for that? I mean, what unit prices?

A. I do not just understand your question.

Q. You arrived at a figure for depreciation; did you use the prices prior to 1913, or since 1913, for the present day prices; or all of them combined?

A. The accrued depreciation?

Q. No, I am speaking not of the accrued now. That is skipped for a moment.

Deputy Commissioner Glennon: You mean the annual depreciation, the last item?

Mr. Dykman: Yes.

The Witness: That is based on the annual rate, the annual percentage rate of depreciation found in the original proceedings in the case.

By Mr. Dykman:

Q. Then did you begin at 1913 to get that figure?

A. No, that is the annual rate, predicated on the annual rate.

Q. That is the percentage, is it?

A. The percentage applied to the total depreciated, the total depreciable property.

[fol. 444] Q. What is that percentage; have you got it?

A. The annual depreciation rate is 1.66 per cent.

Q. Of what?

A. I could not just get the figures, but in words I can give you the answer to it. The annual depreciation is 1.66 per cent., derived from the original findings in the Commission case, and that has been applied.

Q. I do not quite—Well, go ahead.

A. That has been applied to the reproduction cost of the property installed prior to 12/31/13 and in place, 12/31/19, and also applied to the gross additions of the property that have been made in the five or six-year period.

Q. Then you depreciated everything?

A. Or it is the reproduction—or the total reproduction value of \$681,809—Yes—Strike that out. \$681,809, yes, it is the annual depreciation figured on the mains, services and meters as found in the original case.

Q. You said that 1.66 per cent. is taken somewhere from the reservoir of all our information in the old case?

A. It is derived from the old case.

Q. In what way?

A. Based on the average lives, the rate cases during the life of the Commission.

Q. It is a figure used by somebody in the old cases, is it?

A. Yes, sir.

Q. Do you know who that somebody was?

A. Why, the Gas Engineer of the Commission at that time.

Q. Mr. Hine?

A. Mr. Hine.

Q. So that this is Mr. Hine's rate of depreciation?

A. Yes, sir.

Q. Once more applied to Mr. Hine?

A. Yes, sir.

Q. How did you get your so-called accrued depreciation here? There is some debate among my associates as to how it is arrived at. [fol. 445] A. The reproduction cost of mains as of December 31st, 1913, as shown by the original appraisal prepared by Mr. Hine for mains was \$331,253.

Q. Is that on some exhibit? It is not on this one that we have, 32?

A. I believe on Exhibit 63 you will see those figures.

Deputy Commissioner Glennon: Is Exhibit 63 in evidence or in the old case?

Mr. Deegan: In the old case.

Mr. Dykman: In the "grandfather" case.

By Mr. Dykman:

Q. I have Exhibit 63 here, if you would like to look at it?

Witness looks at exhibit.

A. I believe it would be rather lengthy to go through all this figuring.

Deputy Commissioner Glennon: Read the question so we might see if we can have the question answered.

The following question was repeated by the stenographer:

"Q. How did you get your so-called accrued depreciation here?"

Deputy Commissioner Glennon: Can you answer that in a few words? Mr. Dykman just wants to know the method by which you get it.

Mr. Dykman: That is all I want.

The Witness: Why, it is the annual depreciation rate obtained from dividing the annual depreciation amount as shown in Exhibit 63, by the reproduction cost.

[fol. 446] Q. Will you state that again?

Deputy Commissioner Glennon: Just read that over.

The last answer was repeated by the stenographer, and the following addition was made by the witness:

"For mains, meters and services."

Discussion off the record.

Mr. Dykman: I think I can ask a question on the record which will show it.

Deputy Commissioner Glennon: All right.

By Mr. Dykman:

Q. Mr. Mitchell, my understanding is that you took Exhibit 63 in Case 1787 and in order to get your rate you divided some figure into another figure?

A. Yes.

Q. This exhibit has four columns on it: "Reproduction cost," "Annual depreciation," "Accrued depreciation," and "Present value;" now will you tell us what the figures were that you divided?

A. I took the annual depreciation as shown by that exhibit for main service and meters, which totaled \$7,276, and divided that by the reproduction cost for main service and meters, \$438,635, and obtained thereby the annual depreciation of 1.66 per cent.

Q. That is, you took the third, fourth and fifth figure in each one of those columns and added it up and divided the first column total by the second; I mean the other way around.

A. Yes.

Q. That gave you your annual rate?

A. Yes, sir.

Q. Now having the annual rate, how did you get your accrued [fol. 447] depreciation, so-called? Now you can tell us that very shortly, I think.

A. Now on Exhibit 63 it shows the accrued depreciation for main service, meters, to be \$52,043.

Q. Yes.

A. Dividing the \$52,043 representing the accrued depreciation amount, by the annual depreciation amount \$7,276, gives an average lapsed age of property as of December 31st, 1919, as 7.16 years, which at an annual rate of 1.66 per cent equals an accrued depreciation per cent of 11.86.

Is there anything further that you want on that? That is the accrued depreciation per cent.

Q. That is your rate?

A. Yes, sir.

Q. How did you get the figure—I will withdraw that question. That is a matter of mathematics.

A. It is. In fact, that is all a question of mathematics. I might in a very broad statement say that the average age of this property was found to be 7.16 years for the mains, meters and services due to retirements made in the five or six-year period; that the average age of the old property which was installed prior to December 31st, 1913, and which is in place December 31st, 1919, was modified to the extent of 6.9 years.

Now the 6.9—now that property was then increased six years, the average age of the property after making the retirements, was found to be 6.9 years, to which was added 6 years, making the total of 12.96 at an annual rate of 1.66 per cent, and the accrued depreciation, which was computed on the old property which was installed prior to December 31st, 1913, and in place December 31st, 1919, was found to be \$91,470. The actual cost of additions during the period 12/31/13 to 12/31/19 was \$197,031. I assumed the

average rate, the average age of this property, of the property to [fol. 448] be installed uniformly throughout the three years, considered the average age three years.

Q. Who did all this that you are speaking of?

A. That is my own.

Q. That is your own?

A. My own work, because I am re-depreciating the property on the basis of the rates used in the finding—the original findings in the case.

Q. They are not findings, Mr. Mitchell; you know that they are only exhibits?

A. Well, I would say that they are findings.

Q. They are findings of the engineering department, but they are not findings of the Commission?

A. They are findings to the extent that the Commission put in independent exhibits for each company, and the total of those separate exhibits, plus the additional allowance made by the Commission, was the figure which was used was the basis for the rate, and the exact figures in the opinion can be duplicated. I can show that statement is absolutely so.

Q. Well, we won't argue about it. The Commissioner knows what I mean.

Deputy Commissioner Glennon: He is an attorney, too. I believe, Mr. Dykman: Aren't you a member of the Bar?

The Witness: No, I am a graduate of law, but never took the Bar examination.

By Mr. Dykman:

Q. Now these figures, Mr. Mitchell, to sum it all up, are based on Mr. Hine's tabulations introduced in this old case, plus certain retirements which you yourself took from the books of the company?

A. And verified with the records.

[fol. 449] Q. And verified with the records, yes; but the reproduction cost of 1913 is taken from Mr. Hine's tabulation?

A. Yes.

Q. You have used Mr. Hine's rate of depreciation?

A. Yes, sir.

Q. You have arrived at your accrued depreciation by dividing selected figures of Mr. Hine's into other selected figures of Mr. Hine's?

A. Not necessarily so. The revised figures of Mr. Hine showing the rates of depreciation which he arrived at in his original report.

Q. Yes, you have taken three or four or five figures in these columns and added them together and divided them into each other and gotten your rate?

A. Yes, sir.

Q. The basis, then, of your calculations, has been the tabulation of Mr. Hine in this case?

A. Yes, sir.

Mr. Dykman: Now on the basis of that, if the Commission please, I move to strike out all the testimony of this witness as based upon the work of another man who is shown not to be unavailable, whom we all know to be available. There is no original work here. The testimony is improper, and I move to strike it out.

By Mr. Deegan:

Q. Mr. Mitchell—

Mr. Dykman: We can have a ruling.

Mr. Deegan: Of course. I want to bring it out.

Deputy Commissioner Glennon: Motion denied.

Mr. Deegan: I thought you had ruled.

[fol. 450] Mr. Dykman: You anticipated what his ruling would be, but let us have it anyway.

Deputy Commissioner Glennon: I have already denied the motion.

Mr. Dykman: I respectfully except.

Deputy Commissioner Glennon: I had an idea that Mr. Deegan was about to say a few words.

Mr. Deegan: I was going to, but I first wanted to ask a few questions.

Deputy Commissioner Glennon: It is not necessary. It is just to get a ruling on that, because we have already had a ruling.

Mr. Deegan: I want this particularly in the record. There is no secret of what Mr. Mitchell did.

By Mr. Deegan:

Q. In making this Exhibit No. 32, as I understand, you used Exhibit 63, which was an exhibit prepared by Mr. Hine showing his value of the property of Woodhaven Gas Light Company?

A. Yes, sir.

Q. In 1913?

A. Yes, sir.

Q. You also read the opinion of the Commission in these Fourth Ward cases, cases 1787 and 1807, and from reading that opinion, is it true that you felt that the Commission approved of the appraisal made by Mr. Hine?

A. I certainly do, not only from reading the opinion, but reading the testimony in conjunction with the opinion.

Q. You understand that the Commission in that opinion included the properties of the three companies in bulk?

A. Yes, sir.

Q. But as I understand you to explain in answer to a question, [fol. 451] I think of Mr. Dykman's a few minutes ago, by taking the tables of the three companies, it would equal what the Commission found, plus the readjustment for meters, plus allowances made by the Commission?

A. Yes, sir.

Mr. Deegan: I am going to offer in evidence as a part of the record in this case Exhibit 63 which was part of the sustaining data on which Mr. Mitchell based his appraisal, together with the Commission's opinion in the same case.

Mr. Dykman: I object.

Mr. Deegan: I ask that it be considered in evidence.

Mr. Dykman: I object to the opinion of the Commission being evidence in this case.

Deputy Commissioner Glennon: The opinion is not record here. Any of the exhibits would be here.

Mr. Deegan: The exhibit that Mr. Mitchell used and the opinion is part of the sustaining data, and it seems to me that in that connection it is relevant.

Deputy Commissioner Glennon: Well, we will admit the Exhibit 63. The opinion can be obtained by reference at any time.

The exhibit was received in evidence by reference and designated Commission's Exhibit No. 33 of this date.

By Mr. Deegan:

Q. In preparing Exhibit 23 about which Mr. Dykman questioned you, you used what prices for material and labor?

A. The prices prevailing at the time the estimate was originally prepared.

[fol. 452] Deputy Commissioner Glennon: Does it show itself on the exhibit?

The Witness: These were prices as of May, 1919.

By Mr. Deegan:

Q. Upon the assumption that if this work were being done the company would have to pay the prices for making these extensions?

A. If the construction work had been done at the time the estimate was prepared.

Q. If the construction work has been done at the time the estimate was prepared?

A. Yes, sir.

Q. Now in considering the value of the property you used another method, didn't you?

A. Entirely different method.

Q. Which you have explained, I think, to Mr. Dykman?

A. Yes, sir.

Deputy Commissioner Glennon: Explained it to the Commission, too.

Mr. Deegan: Well, to the Commission; pardon me.

Deputy Commissioner Glennon: You have not a jury before you here.

Mr. Deegan: I think that is all.

Mr. Dykman: If the Commission pleases, upon Mr. Deegan's question with reference to the preparation of this Exhibit No. 32, and the answer of the witness, upon the basis of those other ques-

tions, I renew my motion to strike out the testimony of the witness, on the same ground as I gave before.

Deputy Commissioner Glennon: Motion denied.

[fol. 453] Mr. Dykman: Exception.

Deputy Commissioner Glennon: Is there anything further?

Mr. Deegan: I have just a few questions to ask Mr. Gilman.

F. H. GILMAN, called as a witness, being duly sworn, testified as follows:

Deputy Commissioner Glennon: How long will this take?

Mr. Deegan: Five minutes.

Deputy Commissioner Glennon: I have heard statements made like that before. There will be cross-examination of this witness, won't there?

Mr. Deegan: I do not know whether there will or not. The matter I am going to bring out—I will tell just what I want to bring out.

Deputy Commissioner Glennon: Probably it will be conceded.

Mr. Deegan: A few things shown on the annual reports and the readjustments of the companies' revenues for 1918, if they had proportioned the revenue derived from gas, merchandise and jobbing revenue, as they have done in this case, and to show what the taxes have been in the past few years, and whether they have been paid, the special franchise taxes. That is all I intended to bring out.

Mr. Dykman: Isn't that all in the report?

Deputy Commissioner Glennon: Isn't the report in the records downstairs?

[fol. 454] Mr. Dykman: The report is in evidence.

Mr. Deegan: No, it has not been; but I will offer the report of the Woodhaven Gas Light Company for the year 1919, and also the report of the same company for the year 1918.

Mr. Dykman: No objection.

The reports were received in evidence by reference Commission's Exhibits Nos. 34 and 35 of this date.

Direct examination by Mr. Deegan:

Q. What is your position with the Commission?

A. Accountant.

Q. How long have you been with the Commission?

A. Four years.

Q. Have you examined the Woodhaven Gas Light Company report for 1919?

A. As to certain details.

Q. You saw the report of the company for 1918?

A. Yes, sir, in the same way.

Q. In the 1919 report does it appear that the Company shows revenue derived from gas, merchandise and jobbing?

A. It does, yes, sir.

Mr. Dykman: The report shows that.

Q. Do you know upon what basis that amount was, or what was that amount?

A. In 1919?

Deputy Commissioner Glennon: The report is in evidence, isn't it?

Mr. Deegan: Yes.

Deputy Commissioner Glennon: It is shown in the report itself.

Mr. Deegan: But I think that these questions are necessary to bring these things out clearly.

[fol. 455] The Witness: In 1919 the amount shown in the report for the Woodhaven Gas Light Company is \$13,661.99.

Q. Do you know what the—on what basis that distribution was made?

A. I do not know.

Q. Have you prepared another distribution of the gas, merchandise and jobbing revenue for the year 1919, between this company and the Jamaica Gas Light Company and the Richmond Gas Light Company?

A. Yes, sir.

Q. Upon what basis did you go?

A. I distributed the total gas, merchandise and jobbing revenue.

Mr. Dykman: Commissioner, I fail to see so far in what way this witness is qualified to express an opinion, on the three companies, how they re-distributed the business.

Mr. Deegan: I think if you will let him——

Mr. Dykman: He is here as an expert witness.

Mr. Deegan: I am not qualifying him as an expert witness at all. I am simply asking him whether he examined these reports; whether he knows that certain revenues were divided in such a way, whether he understood the basis on which it was done. He says it does not show in the report. I asked him if he has prepared any other basis and on what he has prepared this; on what authority. I think his answer will be perfectly acceptable to counsel.

Mr. Dykman: I object on the ground that it is incompetent, irrelevant [fol. 456] and immaterial, and without a proper basis either as to the witness' qualifications or the papers which he has examined. How can he tell from the report of the Woodhaven Company what the Jamaica people have done,—I do not know.

By Mr. Deegan:

Q. Have you prepared any——

Mr. Dykman: There is no ruling.

Deputy Commissioner Glennon: Just a minute, please. Objection sustained, without first qualifying him.

In view of the fact that the five minutes are up, we had better adjourn until about five minutes after two.

Mr. Deegan: I think I can finish in one or two more questions.

Deputy Commissioner Glennon: You thought that a few minutes ago.

Mr. Deegan: No, I did not.

Deputy Commissioner Glennon: There is going to be cross-examination, I dare say, from the attitude of Mr. Dykman. He wants you to qualify your witness properly first. Naturally he will feel that he will want to cross-examine, possibly.

Mr. Deegan: Well, we will adjourn until five minutes past two?

Deputy Commissioner Glennon: Is that acceptable to you gentlemen? We will adjourn to five minutes past two. There is no use of staying here all afternoon.

Mr. Dykman: I have an engagement, but I suppose that I can break it.

[fol. 457] Deputy Commissioner Glennon: What is that?

Mr. Dykman: I have an engagement, but I suppose that I can break it.

Deputy Commissioner Glennon: Do you wish to have an opportunity to have this witness qualified as an expert?

Mr. Dykman: I think he should be.

Mr. Deegan: Perhaps if I explain this to Mr. Dykman he will consent.

Deputy Commissioner Glennon: You can talk to him and arrange something. It does not make any difference to me, but I do not want to keep all these people here without their lunch, not concerning myself, of course.

You can probably get together and explain what you want, and if you can do it it is perfectly agreeable.

Mr. Deegan: I want to show that in this Jamaica Gas Light Company case on the motion for a temporary injunction, Mr. Steinhoff presented an affidavit in which he stated the revenue derived from the sale of gas, merchandise, should be divided upon the basis of the number of consumers.

Now that is what Mr. Gilman has done here for the 1919 revenue, taken the revenues of the three companies and divided them up on the basis of the consumers. He has also done the same with regard to 1918.

Mr. Dykman: I do not see what it has got to do with the case any more than the Municipal bus lines.

Deputy Commissioner Glennon: If objections are made along that [fol. 458] line, I would sustain the objection; so we will dispose of that point, if that is the purpose of putting this witness on the stand.

Now, is there anything else that you want to prove by this witness?

Mr. Deegan: No, as long as I have the reports in evidence. I think that will be sufficient. There were a few other things which I was going to raise, but I won't now.

Deputy Commissioner Glennon: Does that close the case now?

Mr. Dykman: Why, sir, I do not—I have not gone over this tabulation and this testimony from Mr. Mitchell. I do not think that we will have any further cross-examination to ask for. I would like to have the case held open with the privilege of putting Mr. Mitchell on if after a conference with my experts we think that we should ask some further questions. I do not think we will have to. I think we can advise Mr. Deegan by letter that we have no more and that the case can be closed.

Deputy Commissioner Glennon: We will set the case over until Monday morning, at 10:30 o'clock, with the understanding that you and Mr. Deegan may possibly get together, and you can advise Mr. Deegan that you will not be here, and we will consider the case closed.

Mr. Deegan: You will let me know?

Mr. Dykman: Oh, yes. Then we do not have to come back here at five minutes past two?

Deputy Commissioner Glennon: No, it won't be necessary to come back.

Whereupon, at 1:10 P. M., on the 24th day of March, 1920, [fol. 459] ther hearing in the above-entitled matter was adjourned until Monday, March 29th, 1920, at 10:30 o'clock A. M.

[Title omitted]

Before Hon. Edward J. Glennon, Deputy Commissioner

New York City, March 29, 1920.

Mét pursuant to adjournment at 10:35 o'clock A. M.

Appearances: E. M. Deegan, Esq., Assistant Counsel for the Public Service Commission for the First District.

[fol. 460] Deputy Commissioner Glennon: Case No. 2376, Woodhaven Gas Light Company, extension of mains in Springfield, Laurelton and other localities.

Are you ready?

Mr. Deegan: Yes. In case No. 2376, Woodhaven Gas Light Company, I have received the following letter from the attorneys for the Woodhaven Gas Light Company dated March 26, 1920, which I would like to read into the record:

"In accordance with an arrangement made at the close of the hearing on the 24th instant, you are advised that we do not desire any further cross-examination of Mr. Mitchell, and therefore assume that Case No. 2376, in the matter of the Woodhaven Gas Light Company, may be closed without further hearing.

Will you be good enough to advise us finally that the case has been closed?

Yours very truly, Cullen & Dykman."

In view of that letter, Mr. Commissioner, I suggest that the hearing be formally closed.

Deputy Commissioner Glennon: That is satisfactory to me. Is there any additional evidence to be put in?

Mr. Deegan: No additional evidence.

Deputy Commissioner Glennon: The case will be closed.

Whereupon, at 10:36 o'clock A. M. on the 29th day of March, 1920, the hearing in the above entitled matter was closed.

Last Exhibit No. 35.

[fol. 461]

COMMISSIONER'S EXHIBIT No. 1

Certificate of Incorporation—Woodhaven Gas Light Company

(Cancelled Revenue Stamp, 5c.)

STATE OF NEW YORK.

County of Queens, ss:

We the undersigned being desirous to form a Company for the purpose of manufacturing and supplying gas under and in pursuance of the provisions of an Act of the Legislature of the State of New York entitled "An Act to authorize the formation of Gas Light Companies" passed February 16th, 1848, and the various acts amendatory of the same, do hereby Certify

I. That the Corporate Name of the said Company shall be the Woodhaven Gas Light Company.

II. That the object for which the said Company is formed is the manufacturing and supplying of Gas for the lighting the Streets, Avenues, Highways, Public Places and Public and Private Buildings in the town of Jamaica in the County of Queens and State of New York.

III. That the amount of the Capital Stock of said Company is Twenty Thousand dollars.

IV. That the term of the existence of said Company is Fifty years.

V. That the Number of Shares of which the said Capital Stock shall consist is two hundred.

[fol. 462] VI. That the Number of directors who shall manage the Concerns of said Company for the first year is Five and that the names of such directors are Frederick Cromwell, Charles Lowrey, Daniel McCabe, Albert H. W. Van Sicklen, Edgar M. Cullen.

VII. That the name of the Town and County in which the operations of said Company shall be carried on are the Town of Jamaica, and County of Queens.

In witness whereof we do make sign and acknowledge this Certificate in duplicate this 30th day of August, 1871.

A. H. W. Van Sicklen (Seal), Edgar M. Cullen (Seal),
Charles Lowrey (Seal), Frederic Cromwell (Seal), Daniel
McCabe (Seal).

(Cancelled Revenue Stamp, 5c.)

CITY OF BROOKLYN,
County of Kings, ss:

On this 31st day of August 1871, before me personally came Albert H. W. VanSicklen and Edgar M. Cullen and on the 1st day of September, 1871 before me personally came Charles Lowrey and Frederick Cromwell and on the 8th day of Sept., 1871 before me came Daniel McCabe to me known to be four of the individuals described in and who executed the foregoing Instrument and acknowledged to me that they executed the same.

Edmd. Blamey, Comr. of Deeds.

(Cancelled Revenue Stamp, 5c.)

[fol. 463] STATE OF NEW YORK,
County of Kings, ss:

I, George G. Herman, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record) Do Hereby Certify, that Edmd. Blamey whose name is subscribed to the Certificate of Proof, or acknowledgment of the annexed Instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Commissioner of Deeds, in and for the City of Brooklyn, in said County, dwelling in said City, commissioned and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the hand writing of such Commissioner, and verify believe the signature to the said Certificate of Proof or acknowledgment is genuine

In testimony whereof, I have hereunto set my hand and affixed the Seal of said County and Court, this 8th day of Sept., 1871.

George G. Herman, Clerk. (Seal.)

(Endorsed:) Certificate of Incorporation of the Woodhaven Gas Light Company. Filed Sept. 11, 1871. D. Willers, Jr., Dept. Secy. of State.

[fol. 464] STATE OF NEW YORK,
Office of the Secretary of State, ss:

I have compared the preceding with the original Certificate of Incorporation of Woodhaven Gas Light Company filed in this office on the 11th day of September, 1871, and do hereby certify the same to be correct transcript therefrom and the whole of said original

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this second day of October, one thousand nine hundred and seven.

James L. Whalen, Deputy Secretary of State.

Franchise of the Woodhaven Gas Light Company

The consent of the municipal authorities of the Town of Jamaica, having on the 4th day of October, 1871, been granted to the Woodhaven Gas Light Company, to lay conductors for conducting gas in and through the public streets and highways of said Town of Jamaica, and an application having been made to the Town Board of the Town of Jamaica (the municipal authorities of said Town) by the Woodhaven Gas Light Company for the privilege and authority to lay, construct and maintain conductors, mains and pipes in, under and through the streets, lanes, alleys, squares, parks and highways in said Town of Jamaica opened since October 4th, 1871, and hereafter to be opened, for the purpose of lighting the streets and public or private buildings and furnishing gas to private consumers.

And the said Town Board at a meeting held at the Town Hall in the Village of Jamaica, County of Queens and State of New York, on the 15th day of March, in the year 1897:

Present: Frederick W. Dumton, Supervisor; John B. McCook, Town Clerk; J. Maynard Kissam, B. Frank Wood and Charles Lauer, Jr., Justices, voting in favor of granting the application of said Woodhaven Gas Light Company:

Resolved: That the privilege and authority to lay, construct and maintain conductors, mains and pipes in, under and through the streets, lanes, alleys, squares, parks and highways in the Town of Jamaica opened since October 4, 1871, and hereafter to be opened, for the purpose of conveying and conducting gas for the street lighting and other purposes, be granted to the Woodhaven Gas Light Company, in addition to and as a part of the Franchise heretofore granted to said Company on the 4th day of October, 1871, upon condition that said Company will deposit with the municipal authorities a sufficient sum of money to replace any streets so opened in as good condition as before such gas mains or conductors were laid, said money to be returned to said Company upon completion of repairs.

The original of the above Resolution is on file in the office of the Division of Franchises, Board of Estimate and Apportionment, City of New York, and bears the following endorsement: "Filed in the office of the Town Clerk this 15th day of March, 1897. (Signed) [fol. 466] John B. McCook, Town Clerk."

* * * * *

In the Minutes of the Meeting of the Town Board of the Town of Jamaica, held March 15th, 1897, (on page 262, of Volume 7,

marked 'Town Records, Jamaica'—which is on file in the office of the Bureau of Municipal Investigation and Statistics, Department of Finance, City of New York)—appears the following:

"Application was received through Counsellor Wm. J. Gillen, for a franchise for laying mains, etc., for the Woodhaven Gas Light Company, also one from the Jamaica Gas Light Company, for the laying of mains, etc., for the terms of 50 years from date. It was Resolved that the application of the Woodhaven Gas Light Company and the Jamaica Gas Light Company be granted as requested, and the same be placed on file in the Town Clerk's office. Same was unanimously adopted."

STATE OF NEW YORK,
County of Kings, ss:

A. F. Staniford, being duly sworn, says that he is the Secretary and Treasurer of The Woodhaven Gas Light Company: That the document attached hereto marked "Franchise of The Woodhaven Gas Light Company" is a copy of records on file in the Department of Finance and the Board of Estimate and Apportionment of the City of New York.

A. F. Staniford.

Sworn to before me this 4th day of April, 1908. F. R.
Wogan, Notary Public, Kings County.

[fol. 467] STATE OF NEW YORK,
City of New York,
County of Kings, ss:

W. K. Rossiter, being duly sworn, says that he is the Vice President of The Woodhaven Gas Light Company; that the annexed document marked "Franchise of The Woodhaven Gas Light Company" is copied from the records on file in the office of the Company.

W. K. Rossiter.

Sworn to before me this 16th day of Oct. 1907. F. R.
Wogan, Notary Public, Kings County.

Franchise of the Woodhaven Gas Light Company

We, the undersigned, Supervisor, Town Clerk, Justices of the Peace, and Commissioners of Highways of the Town of Jamaica, in the County of Queens and state of New York, do hereby consent, that the Woodhaven Gas Light Company may have the power and the same is hereby conferred upon and granted to them, of laying conductors for conducting gas in and through the public streets and highways of said Town of Jamaica, and we do hereby exempt the [fol. 468] said Woodhaven Gas Light Company from taxation on

their personal property for the period of three years from the organization of said Company.

Dated, Jamaica, Oct. 4, 1871.

James Nostrand, Supervisor. Hiram U. Rider, Town Clerk.
Seaman Fosdick, Thomas Bradles, John S. Snedeker, Jus-
tices of Peace. John H. Sutphin, H. N. Abrams, James
Creed, Commissioners of Highways.

STATEMENT RE COMPLAINANT'S EXHIBITS NOS. 2 AND 3

These exhibits consist of two large maps showing the sections to which the Citizens Central Gas Committee of the Fourth Ward of the Borough of Queens requests that gas mains be extended.

Printing of these exhibits is omitted by consent.

STATEMENT RE COMPLAINANT'S EXHIBIT NO. 4

This exhibit (to be read with Complainant's Exhibits Nos. 2 and 3) consists of two sheets stating the boundary lines of various sections in the different localities and number of houses in each of said sections. Total No. of houses—873.

Printing of this exhibit is omitted by consent.

[fol. 469] STATEMENT RE COMPLAINANT'S EXHIBIT NO. 5

This exhibit consists of 982 cards purporting to have been signed by persons whose names appear thereon each card bearing upon its face the following words:

"Central Gas Committee of the Fourth Ward, Springfield Gardens,
N. Y.

Date: — —, 1919.

If gas is introduced into my section I will become a customer.

Name: — — — —, Address: — — — —."

Printing of these cards is omitted by consent.

STATEMENT RE COMPLAINANT'S EXHIBIT NO. 6

This exhibit consists of eighteen (18) sheets, on seventeen (17) of which are diagrams showing names of streets in the various sections of the different localities, the boundary lines and the number of different houses in each section. The remaining sheet states that the total number of houses is 863.

Printing of this exhibit is omitted by consent.

[fol. 470] STATEMENT RE COMPANY'S EXHIBIT No. 7

This exhibit is a copy of a photographic map on which has been indicated by an "X", the localities to which the Central Gas Committee requests extension of gas service.

As Exhibit No. 24 is a copy of the same map, the special markings on Exhibit No. 7 have been made on Exhibit No. 24 which is reproduced herein.

STATEMENT RE COMPLAINANT'S EXHIBIT No. 8 FOR IDENTIFICATION

This exhibit is a list of names and addresses of signers of cards, the list being entitled "Springfield Names."

Printing of this exhibit is omitted by consent.

STATEMENT RE COMPANY'S EXHIBIT No. 9

This exhibit is a newspaper clipping containing a statement regarding the real estate situation in Springfield prepared by Mr. William H. Schabehorn, one of the members of the Central Gas Committee.

Printing of this exhibit is omitted by consent.

[fol. 471] STATEMENT RE COMPLAINANT'S EXHIBIT No. 10

This exhibit is a picture published in the Queens County News of March 29, 1919, showing some of the gas mains, which complainants allege were intended for the Springfield extension.

Reproduction of this exhibit is omitted by consent.

STATEMENT RE COMPANY'S EXHIBIT No. 11

This exhibit is a copy of a photographic map (similar to Exhibits 7 and 24) showing localities on which has been indicated the number of houses in each locality. As Exhibit No. 24 is a copy of the same map, the number of houses in each locality indicated on Exhibit No. 11 has been shown on Exhibit No. 24, which is reproduced herein.

STATEMENT RE COMPLAINANT'S EXHIBIT No. 12

This exhibit was read into the record and is printed herein at folios 648 to 654.

STATEMENT RE COMPLAINANT'S EXHIBIT No. 13

This exhibit was read into the record and is printed herein at folios 660 to 662.

Summary of Extension Necessary to Supply St. Alban's, Springfield, Laurelton, and Adjacent Localities

Transmission:

New York Ave.—Platt St. to Locust Ave.	4227' of 12"
Locust Ave.—New York Ave. to Merrick Rd.	3437' of 12"
Merrick Rd.—Locust Ave. to Springfield Rd.	5309' of 12"

12.973' of 12" @ \$3.3718 Per Ft.—\$43,742.36
 Governor Pit (Estimated) 3,000.00

46,742.36

Distribution :	Mains			Services		Meters		Total cost
	No. of houses	Feet	Cost	Feet per house	Number	Cost	Number	
Local designation								
St. Albans.....	168	44,391	\$102,780.98	264	168	\$3,088.00	168	\$108,387.15
Springfield	272	38,078	77,989.06	140	272	4,969.77	272	87,015.73
Laurelton	41	13,333	20,927.70	330	41	753.64	41	614.53
Rosedale Terrace..	111	27,952	61,207.79	252	111	2,040.35	111	64,911.87
Rosedale	125	22,585	40,320.49	181	125	2,297.69	125	1,873.58
Locust Manor.....	84	19,180	39,292.62	228	84	1,544.05	84	42,005.71
Locust Lawn.....	39	8,942	21,257.61	110	39	716.88	39	584.56
So. Jamaica Place..	57	14,743	38,050.20	259	57	1,047.75	57	854.35
Idlewild Park.....	83	13,972	27,880.82	168	83	1,525.06	83	1,244.05
Jamaica Junction..	87	13,574	25,800.57	156	87	1,599.19	87	1,304.01
Hickview Park....	85	14,510	32,302.48	171	85	1,562.43	85	1,274.03
Springfield Park...	71	11,180	27,320.94	158	71	1,365.09	71	1,064.19
Sheffield Manor....	71	20,935	50,751.25	295	71	1,365.09	71	1,064.19
Jamaica Gardens...	38	7,618	16,766.31	201	38	698.50	38	569.57
Bayview Landing..	59	10,025	17,044.33	170	59	1,084.51	59	884.33
	1,391	281,248	\$600,771.15	292	1,391	\$25,568.69		\$20,849.14
Transmission Line.....		12,973 Feet Or 53.27 Miles					1,391	\$647,188.98
May 21, 1919.		294,221 Or 55.72 Miles						46,742.36
								693,931.34

The Woodlaven Gas Light Company

Statement of Revenue and Operating Expenses for Year 1918 and Estimated Result Had 982 Additional Consumers in Springfield Territory Been Supplied

	Operating account for year 1918	Estimated addition for 982 consumers	Total with 982 new consumers added
Commercial	\$379,063.250	*26,808,600	405,871,850
Municipal	1,125,800	.....	1,125,800
	<u>380,189,050</u>	<u>26,808,600</u>	<u>406,997,650</u>
Operating Revenue Sales:			
Commercial @ .95	\$360,044.38	\$25,468.17	\$385,512.55
Municipal @ .75	844.36	.....	844.36
	<u>\$360,888.74</u>	<u>\$25,468.17</u>	<u>\$386,356.91</u>
Operating Expenses:			
Gas Purchased	\$207,079.79	\$14,602.64	\$221,682.43
Distribution Expenses	34,434.23	2,426.17	36,860.40
Commercial Administration	31,538.18	2,222.43	33,760.61
Promotion of Business	2,142.43	.....	2,142.43
General Expenses	13,979.09	.....	13,979.09
General Amortization	5,702.84	402.13	6,101.97
Total	<u>\$294,876.56</u>	<u>\$19,653.37</u>	<u>\$314,529.93</u>

Uncollectible Bills	1,714.73	120.64	1,835.37
Taxes	23,848.26	**16,221.28	40,069.54
Rent	2,450.00	600.00	3,050.00
	<u>\$322,889.55</u>	<u>\$36,595.29</u>	<u>\$359,484.84</u>
Operating Income	<u>\$37,999.19</u>	<u>\$11,127.12</u>	<u>\$26,872.07</u>

If the increase of 15c. per M in price of gas furnished which took effect Jan. 1, 1919, had been in effect during 1918 the expenses would have been increased as follows:

	<u>\$62,123.94</u>	<u>\$4,380.79</u>	<u>\$66,504.73</u>
Loss	<u>\$24,124.75</u>	<u>\$15,507.91</u>	<u>\$39,632.66</u>

*Based on the average sales per meter in use in the Woodhaven Co. territory in 1918, viz.: 27,300 c. f.

**Estimated increase in Special Franchise Tax if the extension of mains to Springfield had been made.
Tax rate in Queens County 1918—2.41.
 $\$673,082.20 \times 2.41 = \$16,221.28.$

The Woodhaven Gas Light Company

Statement of Revenue and Operating Expenses—January 1, 1919, to
May 31, 1919

Gas Purchased.....		172,669,835 cubic feet.
Gas Sold (bills rendered).....		158,398,250 " "
<hr/>		
Revenue:		
Gas sold—Commercial.....	\$150,380.49	
Municipal.....	370.66	
	<hr/>	
Income per M. c. f. of Gas sold.....	\$150,751.15	\$.9517
Operating expenses:		
Production Expenses—Gas Purchased.....	\$112,235.39	
Transmission and Distribution Expenses.....	16,335.88	
Municipal Street Lighting Expenses.....	3.66	
Commercial Expenses.....	17,152.12	
General and Miscellaneous Expenses.....	5,838.53	
Uncollectible Bills.....	582.73	
Taxes.....	9,000.00	
Miscellaneous Rent Deductions.....	1,020.84	
General Amortization.....	2,375.97	
	<hr/>	
— per M. c. f. of Gas sold.....	\$164,545.12	\$1.0388
—		<hr/>
		<i>13,793.97</i>
		<i>\$.0871</i>

Matter printed in italics written in red ink.

The Woodhaven Gas Light Company

Statement of Revenue and Operating Expenses from January 1, 1919, to May 31, 1919, and Estimated Result Had 982 Additional Consumers in the Springfield Territory Been Supplied

Sales in cubic feet:	Operating accounts for first 5 months 1919	Estimated addition for 982 consumers	Total with 982 new consumers added
Commercial	157,904.050	* 10,857,974	168,762,024
Municipal	494,200	.....	494,200
Total	158,398,250	10,857,974	169,256,224
Operating Revenue:			
Commercial	* 150,380.49	* 10,315.08	* 160,695.57
Municipal	370.66	.....	370.66
Total	* 150,751.15	* 10,315.08	* 161,066.23
Operating Expenses:			
Gas Purchased	* 112,235.39	* 7,693.96	* 119,929.35
Distribution Expenses	16,339.54	1,119.46	17,459.00
Commercial Administration	15,846.68	1,085.80	16,932.48
Promotion of Business	1,305.44	.....	1,305.44
General Expenses	5,838.53	.....	5,838.53
General Amortization	2,375.97	162.87	2,538.84
Total	153,941.55	* 10,062.09	* 164,003.64

Statement of Revenue and Operating Expenses—Continued

	Operating accounts for first 5 months 1919	Estimated addition for 982 consumers	Total with 982 new consumers added
Uncollectible Bills	582.73	40.17	622.90
Taxes	9,000.00	**6,646.70	15,646.70
Rent	1,020.84	250.00	1,270.84
Total	<u>\$164,545.12</u>	<u>\$16,998.96</u>	<u>\$181,544.08</u>
Operating Loss	<u>\$13,793.97</u>	<u>\$6,683.88</u>	<u>\$20,477.85</u>

*Based on the average sales per meter in use in the Woodhaven Co. territory in 1919 (5 months), viz:
11,057 c. f.

**Estimated increase in Special Franchise Tax if the extension of mains to Springfield had been made.
Tax Rate in Queens County 1919—2.37.

($\$673,082.20 \times 2.37$) $\times \frac{5}{12} = \$6,646.70$.

Matter printed in italics written in red ink.

[fol. 476]

COMPANY'S EXHIBIT No. 18

The Woodhaven Gas Light Company

First Five Months—Year 1919

Cost of gas allowed by Commissioner Hayward in 1916 as a fair rate for gas supplied to the Fourth Ward Companies:

Cost	\$.4400
Transmission losses .....	.0400
Total cost	<u>\$.4800</u>

Increases in cost per M cubic feet of gas manufactured:

Coal and coke	\$.0603
Oil .....	.1544
Labor .....	.0191
	<u>.2338</u>
	<u>\$.7138</u>

Distribution (Commissioner Hayward) .....	.3200
Fair return on property used (Commissioner Hayward) ..	.1300
	<u>\$1.1638</u>

5—JC.

7/16/19.

[fol. 477]

COMMISSION'S EXHIBIT No. 19

Pipe Received and Used in Fourth Ward—Queens

Reg. #1375, Dated Oct. 27, 1916

Pipe Delivered at Jamaica Station, L. I. R. R., from the United States C. I. Pipe & Foundry Co.

Cost

	Quantity ordered	Per ton	Freight	Total
833	Lgths. 4"	\$32.42	\$3.08	\$35.50
2563	" 6"	29.42	3.08	32.50
2779	" 12"	28.42	3.08	31.50

Pipe Used in Ward Four

The Jamaica Gas Light Company:

	4"	6"	8"	12"
May 1-Dec. 31, 1917.....	2,907'	4,156'	208'	152'
Jan. 1-Dec. 31, 1918.....	1,086'	1,629'	...	...
Jan. 1-July 1, 1919.....	1,013'	532'	...	8'
Total	5,006'	6,317'	208'	160'

Richmond Hill & Queens County Gas Light Company:

	4"	6"	8"	12"
May 1-Dec. 31, 1917.....	157'	1,217'	.....	..
Jan. 1-Dec. 31, 1918.....	...	845'	1,899'	42'
Jan. 1-July 1, 1919.....	...	288'	.....	..
Total	157'	2,340'	1,899'	42'

[fol. 478] The Woodhaven Gas Light Company:

	4"	6"	8"	12"
May 1-Dec. 31, 1917.....	1,053'	7,022'	139'	452'
Jan. 1-Dec. 31, 1918.....	255'	2,439'	136'	...
Jan. 1-July 1, 1919.....	558'	2,759'	31'	...
Total	1,866'	12,220'	306'	452'

Pipe Used for Government Purposes

The Brooklyn Union Gas Company:

Jan. 1918.—173' of 6" (Naval Base Warehouse 12' WWBL.—25' NNBL—to 145' SNBL of Naval Base Warehouse on 35th St.) to supply coffee roasting machine. 543' of 6" (35th St. SS fm 49' EWC 2nd Av. to 13' EEBL Naval Pier).

Nov. 1918.—774' of 12" (58th St. NS fm 3' EWC of) (2nd Av to 8'6" EWC 1st) (Av.) for army base supply. 255' of 12" (2nd Av WS fm 7'6" SNC of 58th St. to 4'3" SNC 59th St.)

Recapitulation

Where used	4"	6"	8"	12"
Jamaica	5,006'	6,317'	208'	160'
Richmond Hill.....	157'	2,340'	1,899'	42'
Woodhaven	1,866'	12,220'	306'	452'
Government Purposes.....	.....	716'	.....	1,029'
Total	7,029'	21,593'	2,413'	1,683'

Cost of Mains, Services, and Meters to Supply Springfield, Laurelton, Rosedale, and Adjacent Developments

Gas Co.'s Est. as of 1915 Survey

Transmission

12" New York avenue, Platt street to Locust Avenue.....	4,400' @ \$3.8861.....	\$17,098.84
12" Locust avenue, New York avenue to Merrick road.....	3,410' @ 3.8861.....	13,251.60
12" Merrick road, Locust avenue to Springfield road.....	5,100' @ 3.8861.....	19,819.11

12" Governor of intersection of Springfield and Merrick roads—(estimated).....	12,900'.....	\$50,169.55
		3,000.00

\$53,169.55

Distribution

Springfield:		
4" pipe, 10,000' @ \$1.2301.....	\$12,301.00	
6" pipe, 6,750' @ 1.7811.....	12,022.43	
12" pipe, 8,450' @ 3.8861.....	32,837.55	

25,200'		
189—1½" Services @ \$20.2572.....	\$57,160.98	
189—5-light Meters @ 15.6533.....	3,828.61	
	2,958.47	

(189 houses, 133 feet mains per house)..... \$63,948.06

Cost of Mains, Services, and Meters—*Continued*

Laurelton :

4" pipe, 1,940' @	\$1,2301.			\$2,386.39
6" pipe, 1,000' @	1,7811.			1,781.10
8" pipe, 2,940' @	2,2702.			6,674.39
12" pipe, 3,750' @	3,8861.			14,572.88
<hr/>				
9,630'				\$25,414.76
36—11" Services @	\$20,2572.			729.26
36—5-light Meters @	15,6533.			563.52

(36 houses, 267 feet per house) \$26,707.54

Rosedale and Rosedale Terrace:

4" pipe, 6,900' @	\$1,2301.			\$8,478.69
6" pipe, 9,500' @	1,7811.			16,920.45
12" pipe, 10,500' @	3,8861.			40,804.05
<hr/>				
26,900'				\$66,212.19
158—11" Services @	\$20,2572.			3,200.64
158—5-light Meters @	15,6533.			2,473.22

(109 houses, Rosedale, 49 houses, Rosedale Terrace—158 houses, 164 feet per house) \$71,886.05

[fol. 480] Sheffield Manor:

6" pipe, 2,375' @	\$1,7811.			\$4,230.11
12" pipe, 3,500' @	3,8861.			13,601.35

\$17,831.46

34-14" Services @ \$20.2572	688.74
34-5-light Meters @ 15.6533	532.21

(34 houses, 175 feet per house) \$19,052.41

Jamaica Junctions:

6" pipe, 4,000' @ \$1.7811	\$7,124.00
12" pipe, 1,875' @ 3.8861	7,286.44

5,875'	
64-14" Services @ \$20.2572	\$14,410.84
64-5-light Meters @ 15.6533	1,296.46
	1,001.81

(64 houses, 91 feet per house) \$16,709.11

St. Albans (Farmers av. north of Merrick rd.):

4" pipe, 625' @ \$1.2301	\$768.81
6" pipe, 4,000' @ 1.7811	7,124.40
8" pipe, *1,125' @ 2.2702	2,553.98
12" pipe, 6,300' @ 3.8861	24,482.43

12,050'	
72-14" Services @ \$20.2572	\$34,929.62
72-5-light Meters @ 15.6533	1,458.52
	1,127.04

(*72 houses, 167 feet per house) \$37,515.18

*Half the run of 8" main and half the number of houses on Merrick road, from Springfield rd. to Farmers Av.

Cost of Mains, Services, and Meters—*Continued*

Hickview Park & Springfield Park (Farmers av. south of Merrick rd.)

6" pipe, 4,800' @ \$1.7811.....	\$8,549.28
8" pipe, *1,560' @ 2.2702.....	3,541.51
12" pipe, 10,500' @ 3.8861.....	40,804.05
<hr/> 16,860'	
85—14" Services @ \$20.2572.....	\$52,894.84
85—5-light Meters @ 15.6533.....	1,721.86
	<hr/> 1,330.53

(*56 houses, Hickview Park, 29 houses, Springfield Park—85 houses, 198 feet per house) ... \$55,947.23

*Half the run of 8" main and half the number of houses on Merrick road, from Springfield rd. [fol. 481] to Farmers Av.

South Jamaica Place (Merrick road, west of Farmers ave.)

6" pipe, 4,500' @ \$1.7811.....	\$8,014.95
8" pipe, 2,600' @ 3.2702.....	5,902.52
<hr/> 7,100'	
31—14" Services @ \$20.2572.....	\$13,917.47
31—5-light Meters @ 15.6533.....	627.97
	<hr/> 485.25
(31 houses, 229 Feet per house).....	\$15,030.69

Recapitulation

Local designation	No. of houses	Total feet of pipe	Feet of pipe per house	No. of services	No. of meters	Total cost
Springfield	189	25,200	133	189	189	\$63,948.06
Laurelton	36	9,630	267	36	36	26,707.54
Rosedale and Rosedale Terrace	158	26,900	164	158	158	71,886.05
Sheffield Manor	34	5,875	175	34	34	19,052.41
Jamaica Junction	64	5,875	91	64	64	16,709.11
St. Albans	72	12,950	167	72	72	37,515.18
Hickview Park and Springfield Park	85	16,860	198	85	85	55,947.23
South Jamaica Place	31	7,100	229	31	31	15,030.69
Total	669	109,490	163	669	669	\$306,796.27
Cost of transmission main and governor						53,169.55
						\$359,965.82

All material costs used in above calculations are market quotations of January, 1919. The labor costs are based on present rates paid.

Feb. 3, 1919.

[fol. 482]

COMPANY'S EXHIBIT No. 21

The Woodhaven Gas Light Company

Statement of Revenue and Operating Expenses—June 1, 1919, to
October 31, 1919

Gas Purchased	173,438,858 cubic feet.
Gas Sold (bills rendered)	159,259,550 " "

Revenue:

Income per M. cu. ft. of	
Gas sold—Commercial...	\$159,049.20
Municipal	155.26
	<hr/>
Income per M. cu. ft. of	\$159,204.46
Gas Sold	\$.9997

Operating Expenses:

Production Expenses—	
Gas Purchased	\$112,735.26
Transmission and Distribution Expenses	17,242.41
Municipal Street Lighting Expenses	15.45
Commercial Expenses ...	15,726.15
General and Miscellaneous Expenses	5,625.25
Uncollectible Bills	398.75
Taxes	6,700.00
Miscellaneous Rent Deductions	1,020.83
General Amortization ..	2,388.88
	<hr/>
Cost per M. cu. ft. of Gas	\$161,852.98
Sold	\$1.0163
Loss	\$2,648.52
	<hr/>
Loss	\$.0166

Gain in Consumers, January 1 to May 31, 1919.....	112
" " " June 1 to October 31, "	722
	<hr/>
" " " January 1 to Oct. 31, "	834

Public Service Commission for the First District of New York

Case #2376

Petition for the Extension of Gas Mains to Serve Certain Localities in the So-called Springfield Territory of the Fourth Ward of Queens County, Included in the Franchise District of the Woodhaven Gas Light Co.

Comparative Results of Three Studies Prepared by Public Service Commission Engineers Showing the Estimated Cost to Construct a System of Gas Transmission and Distribution to Serve the Springfield District

Ref. File 108X, Page 17-13

Study	Section	No. of houses	No. of feet of distribution mains					Estimated cost to construct (as of May, 1919)				Average cost per consumer**
			4"	6"	8"	12"	Total	Distribution mains	Transmission and governor	Meters and services	Total	
1	St. Albans	168	11,786	10,579	.....	22,026	44,391	\$97,806.93	\$5,438.05	\$3,566.64	\$106,811.62	\$635.78
2	St. Albans	124	5,387	5,775	.....	12,680	23,842	54,460.76	5,438.05	2,632.52	62,531.33	504.29
3	St. Albans	116	5,056	5,758	.....	11,353	22,167	49,805.42	9,760.69	2,462.68	62,028.79	534.73
1	Springfield	272	13,845	9,988	.....	14,245	38,078	73,869.54	8,800.81	5,774.56	88,444.91	325.20
2	Springfield	265	13,845	9,988	.....	10,745	34,578	62,533.75	11,632.39	5,625.95	79,792.09	301.07
3	Springfield	249	11,916	10,100	.....	7,368	29,384	49,803.88	20,951.81	5,286.27	76,041.96	305.39
1	Locust Manor	84	6,994	5,036	.....	7,150	19,180	37,153.86	2,719.02	1,783.32	41,656.20	495.90
2	Locust Manor	84	6,994	5,036	.....	7,150	19,180	37,153.86	3,691.39	1,783.32	42,628.57	507.40
3	Locust Manor	78	6,994	6,515	.....	4,172	17,681	31,083.71	.....	1,655.94	32,739.65	419.74
1	South Jamaica Place	57	782	4,883	.....	9,078	14,743	36,918.33	1,850.20	1,210.11	39,978.64	701.29
2	South Jamaica Place	57	782	4,883	.....	9,078	14,743	36,918.33	2,498.45	1,210.11	40,626.89	712.79
3	South Jamaica Place	35	.....	6,709	.....	.....	6,709	9,242.99	.....	743.05	9,986.04	285.32
1	Rosedale Terrace	111	6,058	10,138	.....	11,756	27,952	58,156.18	3,592.35	2,356.53	64,105.06	577.53
2	Rosedale Terrace	68	5,189	5,887	.....	7,624	18,700	38,039.87	2,984.63	1,443.64	42,468.14	624.51
3	Rosedale Terrace	65	4,391	5,635	.....	8,072	18,098	38,338.33	5,469.35	1,379.95	45,187.63	695.19
1	Rosedale	125	5,618	12,132	.....	4,835	22,585	38,043.55	4,042.52	2,653.75	44,739.82	357.95
2	Rosedale	114	5,618	9,641	.....	4,315	19,574	32,927.52	5,001.38	2,420.22	40,349.12	353.93
3	Rosedale	105	3,420	8,046	.....	3,954	15,420	27,342.64	8,835.10	2,229.15	38,406.89	365.78
1	Locust Lawn	39	1,509	2,875	.....	4,558	8,942	20,246.22	1,264.98	827.97	22,339.17	572.73
2	Locust Lawn	39	1,509	2,875	.....	4,558	8,942	20,246.22	1,710.64	827.97	22,784.83	584.23
3	Locust Lawn	34	1,509	3,585	.....	.....	5,094	6,461.93	.....	721.82	7,183.75	211.29
1	Laurelton	41	6,431	3,184	2,891	1,027	13,533	19,661.80	1,328.00	870.43	21,860.23	533.16
2	Laurelton	41	6,431	3,184	2,891	1,027	13,533	19,661.80	1,800.67	870.43	22,332.90	544.65
3	Laurelton	*	*	*	*	*	*	*	*	*	*	*
1	Jamaica Junction	87	3,288	6,573	.....	3,713	13,574	24,399.53	2,813.56	1,847.01	29,060.10	334.04
2	Jamaica Junction	87	3,288	6,573	.....	3,713	13,574	24,399.53	3,812.93	1,847.01	30,059.47	345.56
3	Jamaica Junction	*	*	*	.....	*	*	*	*	*	*	*
1	Hickview Park	85	3,851	4,140	.....	6,519	14,510	30,703.85	2,746.03	1,804.55	35,254.43	414.81
2	Hickview Park	85	3,851	4,140	.....	6,339	14,330	30,120.86	3,727.40	1,804.55	35,652.81	419.46
3	Hickview Park	*	*	*	.....	*	*	*	*	*	*	*
1	Springfield Park	71	2,010	3,055	.....	6,115	11,180	26,042.62	2,300.37	1,507.33	29,850.32	420.39
2	Springfield Park	62	1,615	3,055	.....	4,493	9,163	20,390.66	2,719.02	1,316.26	24,425.94	393.97
3	Springfield Park	*	*	*	.....	*	*	*	*	*	*	*
1	Idlewild Park	83	5,891	3,073	.....	5,008	13,972	26,398.78	2,683.01	1,762.09	30,843.88	371.66
2	Idlewild Park	*	*	*	.....	*	*	*	*	*	*	*
3	Idlewild Park	*	*	*	.....	*	*	*	*	*	*	*
1	Sheffield Manor	71	2,946	6,913	.....	11,076	20,935	48,370.09	2,300.37	1,507.33	52,177.79	734.86
2	Sheffield Manor	*	*	*	.....	*	*	*	*	*	*	*
3	Sheffield Manor	*	*	*	.....	*	*	*	*	*	*	*
1	Jamaica Gardens	38	3,256	853	.....	3,539	7,648	15,923.25	1,228.96	806.74	17,958.95	472.62
2	Jamaica Gardens	*	*	*	.....	*	*	*	*	*	*	*
3	Jamaica Gardens	*	*	*	.....	*	*	*	*	*	*	*
1	Bayview Landing	59	2,931	4,985	.....	2,109	10,025	16,656.43	1,908.72	1,252.57	19,817.72	335.90
2	Bayview Landing	*	*	*	.....	*	*	*	*	*	*	*
3	Bayview Landing	*	*	*	.....	*	*	*	*	*	*	*
1	Total (Entire Territory)	1,391	77,196	88,407	2,891	112,754	281,248	\$570,350.96	\$45,016.95	\$29,530.93	\$644,898.84	\$463.62
2	Total (Entire Territory)	1,026	54,509	61,037	2,891	71,722	190,159	376,853.16	45,016.95	21,781.98	443,652.09	432.41
3	Total (Entire Territory)	682	33,286	46,348	.....	47,892	127,526	257,095.85	45,016.95	14,478.86	271,574.71	398.20

Study 1—Based upon the assumption that all sections covered by Gas Company's Map and Estimates are to be served.

Study 2—Based upon the assumption that only the sections covered by the Map of Petitioners are to be served.

Study 3—Based upon the assumption that only certain of the sections shown by the Petitioner's Map are to be served namely:

St. Albans
Springfield
Locust Manor

Locust Lawn

South Jamaica Place
Rosedale
Rosedale Terrace

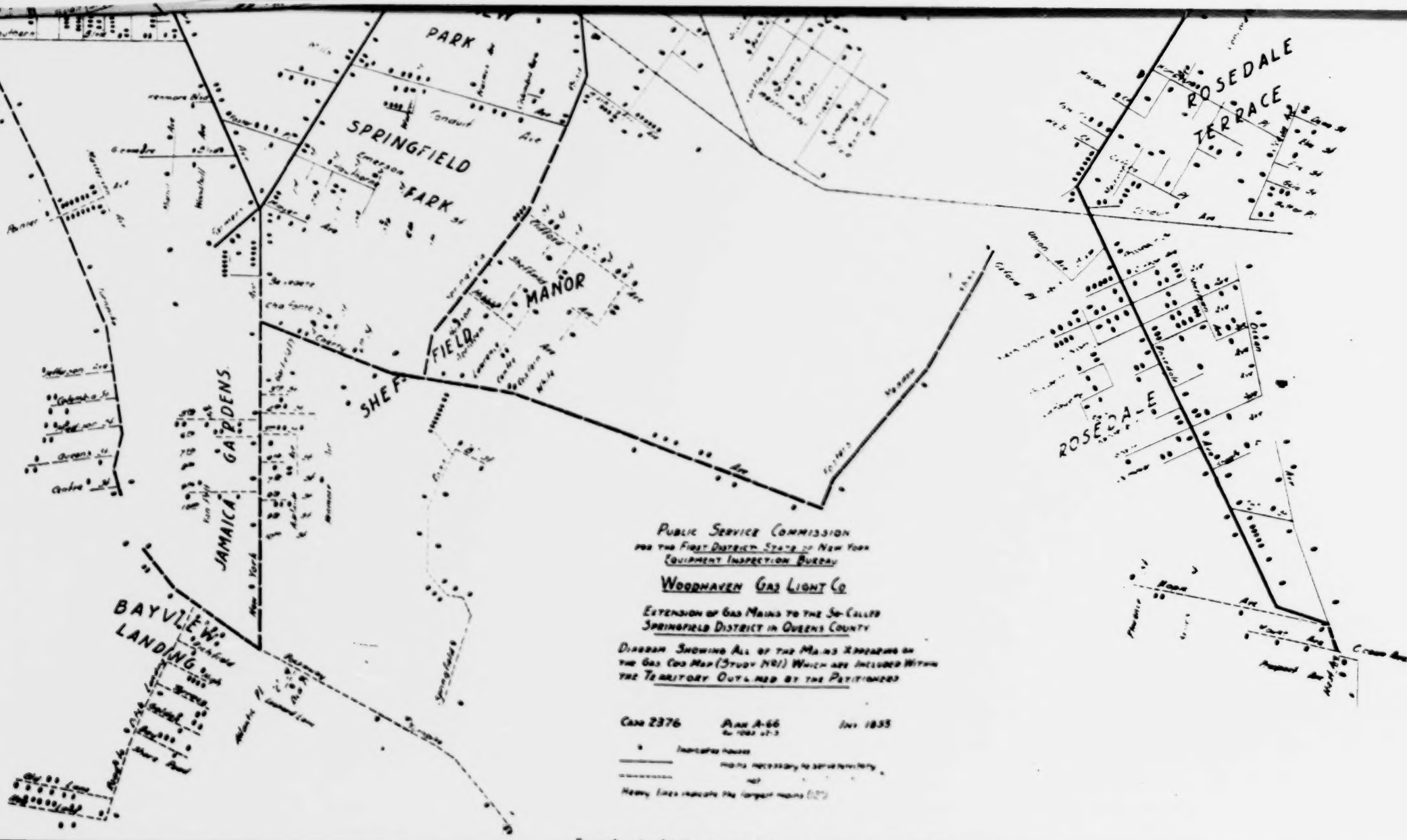
Equipment Inspection Bureau.
Investigation 1855.
December 16, 1919.

*Locality not involved in this study.

**Based on the assumption that all houses in place as of January 1, 1919, will be consumers.

STUDY 2





PUBLIC SERVICE COMMISSION
FOR THE FIRST DISTRICT, STATE OF NEW YORK
EQUIPMENT INSPECTION BUREAU

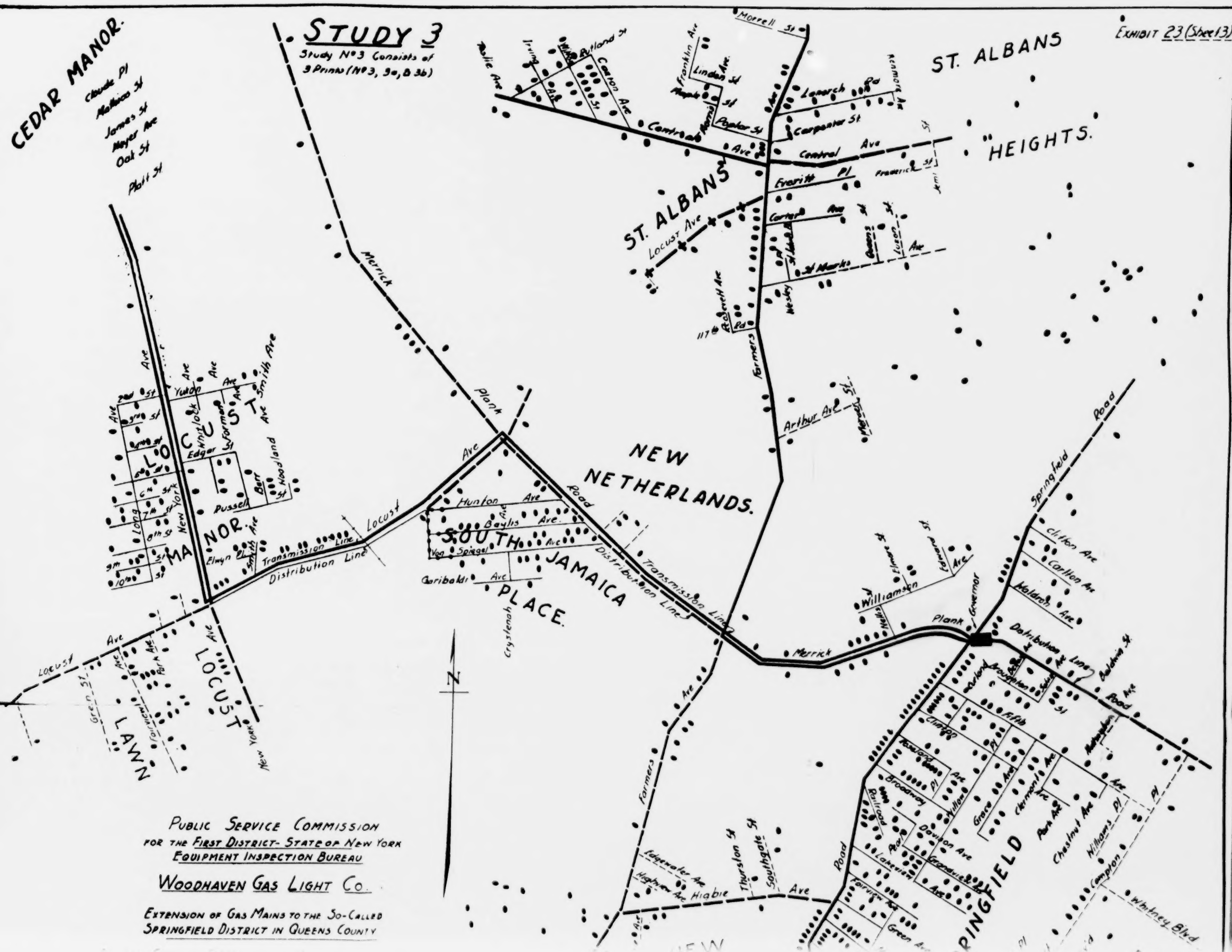
WOODHAVEN GAS LIGHT CO.

EXTENSION OF GAS MAINS TO THE SO-CALLED
SPRINGFIELD DISTRICT IN QUEENS COUNTY

DIAGRAM SHOWING ALL OF THE MAINS SHOWN ON
THE GAS COO MAP (STUDY NR1) WHICH ARE INCLUDED WITHIN
THE TERRITORY OUTLINED BY THE PETITIONERS

CASE 2376 PLAN A-66 JUNE 1893
AS 1902 27-3

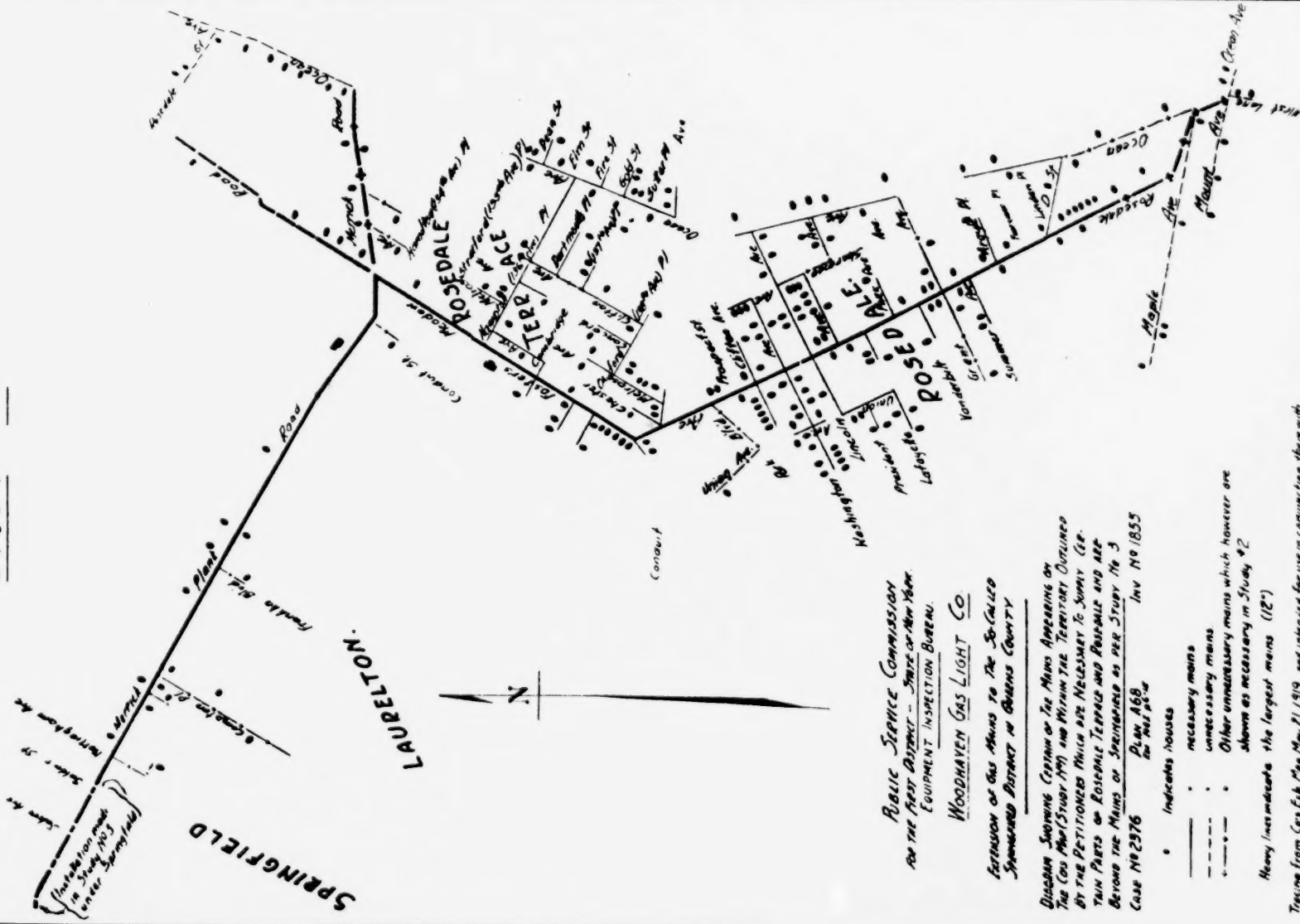
Indicated houses
Main necessary to serve territory
Heavy lines indicate the largest mains (12")



Study 3a.

EXHIBIT 23 (Sheet 4)

STUDY 3a



STUDY 3b

Just

Minor.



CLUB
JOCKEY

A close-up photograph of a domino. The word "LOCUST" is printed in large, bold, black capital letters on a white background. Above the word, there is a small fraction-like symbol consisting of a horizontal line with a dot above it and a dot below it. The domino is part of a larger set, with other dominoes visible in the background, some showing numbers and other words like "FOREVER".

2000

JUNCTION

ALCA 34

JAMAICA FALLS

PARK.

1015710

PUBLIC SERVICE COMMISSION
FOR THE FIRST DISTRICT - STATE OF NEW YORK
EQUIPMENT INSPECTION BUREAU

WOODHAVEN GAS LIGHT CO.

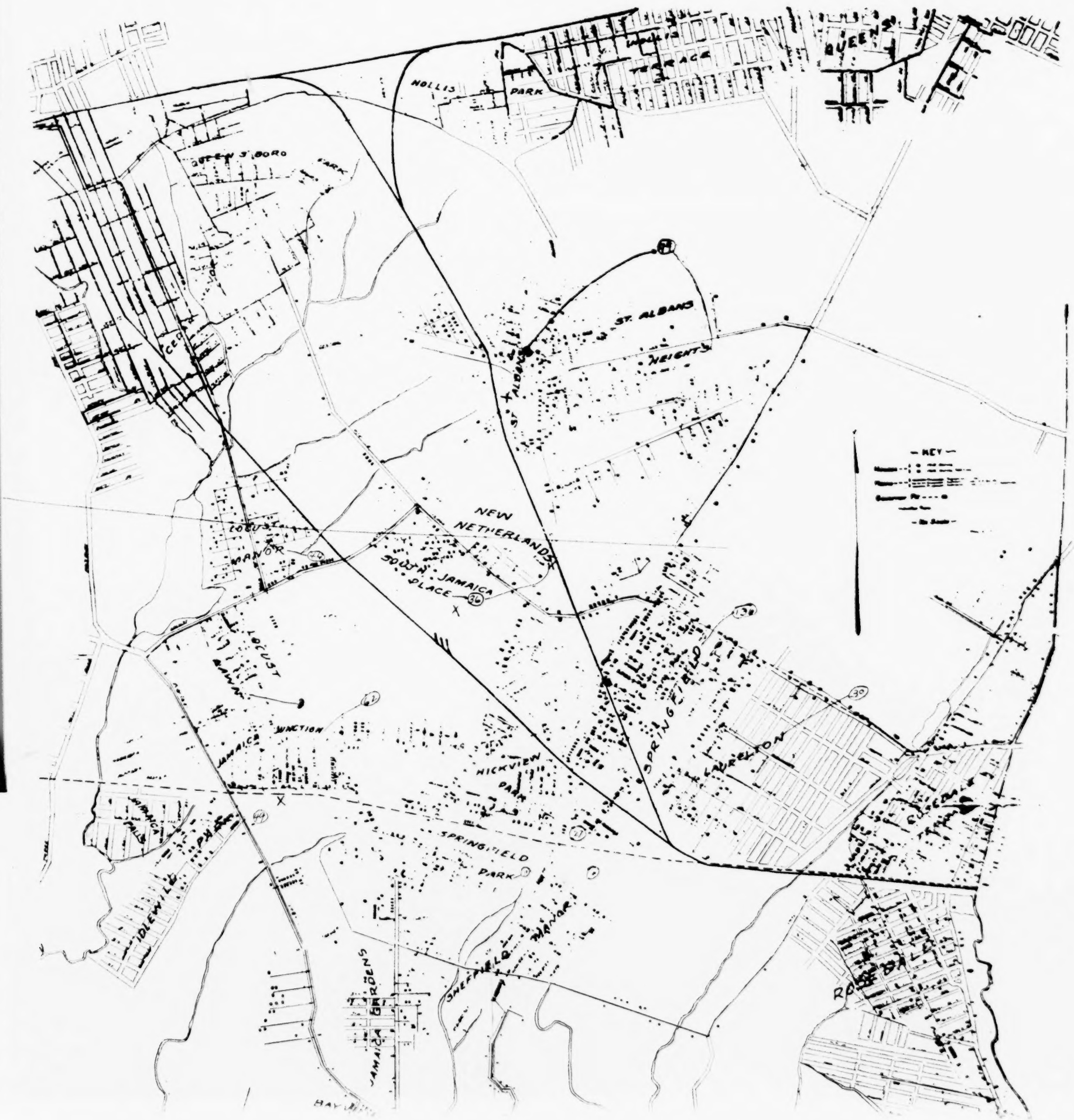
EXTENSION OF GAS MAINS TO THE SO-CALLED
SPRINGFIELD DISTRICT IN QUEENS COUNTY

DIAGRAM SHOWING SUCH DISTRIBUTION MAINS
APPENDING ON GAS COMPANY'S MAP (STUDY #) WHICH
SUPPLY CERTAIN PARTS OF LOCUST LAWN AND ARE
BEYOND THE MAINS OF LOCUST MANOR AS PER STUDY NO.

CASE No 2376 PLAN 169 IN 1855
FEB 1855

- Indicates houses
- necessary mains
- - - mains considered in Study 3 as Locust Manor
- - - - - mains not considered in Studies 3, 3+836
- heavy lines " the largest mains (12")

Tracing from Gatch Map, May 21, 1919 and intended for use in connection with the same.



FOR THE FIRST DISTRICT-STATE OF NEW YORK
EQUIPMENT INSPECTION BUREAU

WOODHAVEN GAS LIGHT CO.

EXTENSION OF GAS MAINS TO THE SO-CALLED
SPRINGFIELD DISTRICT IN QUEENS COUNTY

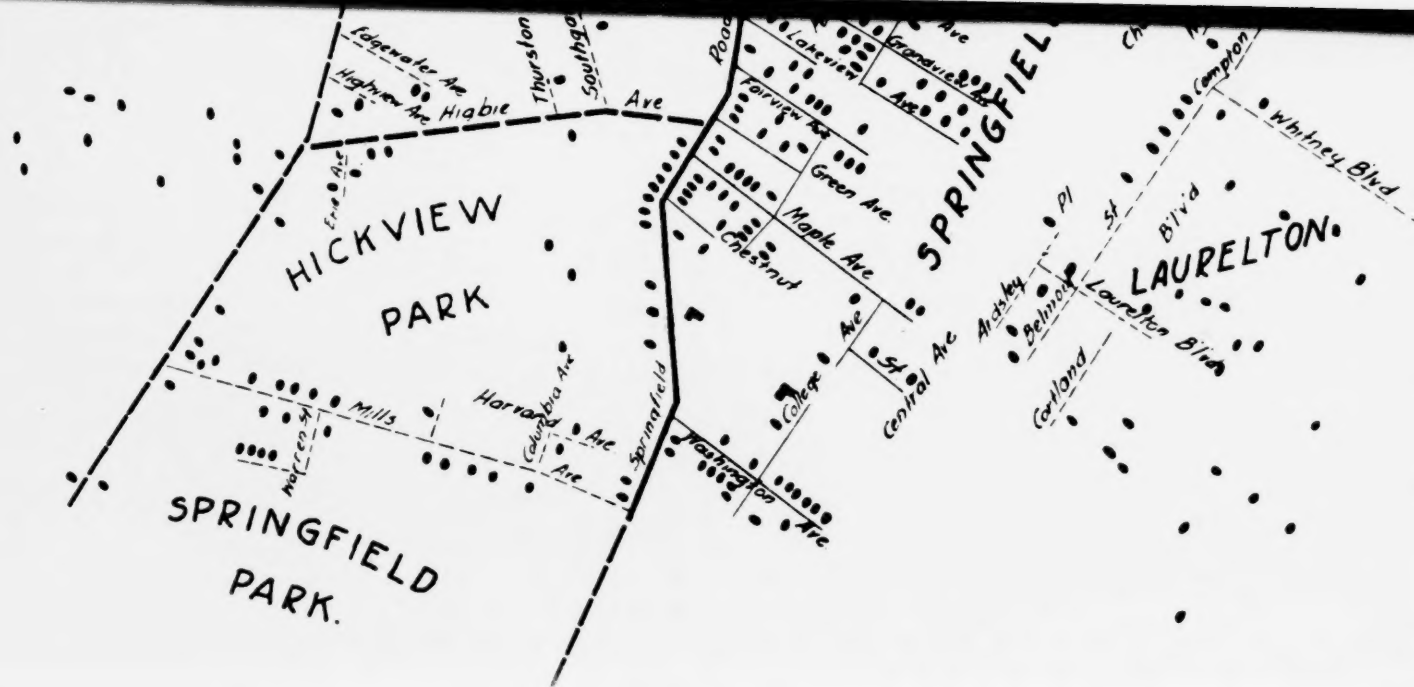
DIAGRAM SHOWING CERTAIN OF THE MAINS APPEARING ON
 THE GAS CO'S MAP (STUDY NO 1) AND WITHIN THE TERRITORY OUT-
 LINED BY THE PETITIONERS WHICH ARE NECESSARY TO SUPPLY
 CERTAIN PARTS OF LOCUST MANOR, SOUTH JAMAICA PLACE,
 ST ALBANS AND SPRINGFIELD.

CASE 8376

PLAN A-67
 2d E 100-X p 6-1

INV 1855

- Indicates houses
 - necessary mains
 - - - unnecessary mains
 - + + + other unnecessary mains which however are shown as necessary in Study No 2
 - mains not on Gas Co's Map
- Heavy Lines indicate the largest Mains (12")



[fol. 483]

COMPANY'S EXHIBIT No. 22

The Woodhaven Gas Light Company

Statement of Revenue and Operating Expenses from January 1, 1919, to October 31, 1919, and Estimated Result Had 982 Additional Consumers in the Springfield Territory Been Supplied.

	Operating ac- counts for first 10 months 1919	Estimated addition for 982 consumers	Total with 982 con- sumers added
Sales in cubic feet:			
Commercial	316,956,600	*21,400,726	338,357,326
Municipal	701,200	.....	701,200
Total	317,657,800	21,400,726	339,058,526
Operating revenue:			
Commercial	\$309,429.69	\$20,893.53	\$330,323.22
Municipal	525.92	.....	525.92
Total	\$309,955.61	\$20,893.53	\$330,849.14
Operating expenses:			
Gas Purchased	\$224,970.65	\$15,155.99	\$240,126.64
Distribution Expenses..	33,597.40	2,264.20	35,861.60
Commercial Administra- tion	29,940.59	2,015.95	31,956.54
Promotion of Business..	2,937.69	.....	2,937.68
General Expenses	11,463.78	.....	11,463.78
General Amortization...	4,764.85	321.01	5,085.86
Total	\$307,674.95	\$19,757.15	\$327,432.10
Uncollectible Bills.....	981.48	66.34	1,047.82
Taxes	15,700.00	†13,293.37	28,993.37
Rent	2,041.67	500.00	2,541.67
Total	\$326,398.10	\$33,616.86	\$360,014.96
Operating Loss..	\$16,442.49	\$12,723.33	\$29,165.82

Tax Rate in Queens County 1919—2.37.

(\$673,082.20 x 2.37) x 10/12—\$13,293.37.

*Based on the average sales per meter in use in the Woodhaven Co. territory in 1919 (10 months), viz.: 21,793 cubic feet.

†Estimated increase in Special Franchise Tax if extension of mains to Springfield had been made.

(Here follow Exhibit No. 23, consisting of five sheets, and Exhibit No. 24, marked side folio pages 484 and 485, 486 and 487, 488, 489, 490, and 491.)

Meters (units) :

	3-lt.	5-lt.	10-lt.	20-lt.	30-lt.	45-lt.	60-lt.	100-lt.	150-lt.	3-lt. PP	5-lt. PP
Meters set at June 30, 1919.....	224	13,978	68	161	63	31	11	9	2	386	17
Meters in stock at June 30, 1919.....	95	62	14	3	6	1	1	4	.....	69	40
Total Meters at June 30, 1919.....	319	14,040	82	164	69	32	12	13	2	455	57

Total	
Reg.	Total
14,547	403
186	14,950
	109
14,733	295
	512
	15,245

Aug. 4, 1919.

[fol. 493]

COMPANY'S EXHIBIT No. 26

The Woodhaven Gas Light Company

Pavement over gas mains at Dec. 31, 1913. (Exhibit #41, Ward #4 Rate Case).....	\$1,482.84
Pavement disturbed for new construction over mains from Jan. 1, 1914, to June 30, 1919.....	179.84

Total pavement over mains at June 30, 1919.... \$1,662.68

Pavement over services at Dec. 31, 1913. (Exhibit #42 Ward #4 Rate Case).....	\$3,813.84
Pavement disturbed for new construction over services from Jan. 1, 1914, to June 30, 1919.....	422.81

Total pavement over services at June 30, 1919... \$4,236.65

Aug. 4, 1919.

[fol. 494]

COMPANY'S EXHIBIT No. 27

William W. Randolph, M. E.
The Woodhaven Gas Light Company

Summary

Estimated cost of reproducing the property new as of June 30, 1919

	Estimated cost of reproducing the property new as of June 30, 1919
Street Mains.....	\$925,268.59
20% Overhead.....	185,053.71
Total Mains.....	\$1,110,322.30
Services.....	\$234,379.92
20% Overhead.....	46,875.98
Total Services.....	\$281,255.90
Consumers' Meters.....	\$165,777.31
20% Overhead.....	33,155.46
Total Meters.....	\$198,932.77
Total Mains, Services and Meters.....	\$1,325,425.82
20% Overhead.....	265,085.15
Grand Total.....	\$1,590,510.97

	Estimated cost of reproducing the property new as of June 30, 1919
Paving over Mains.....	1,662.68
Paving over Services.....	4,236.65
Working Capital.....	65,000.00
Meters in Stock.....	3,621.15
	<hr/>
	\$1,665,031.45
Going Concern Value.....	499,509.43
	<hr/>
Total Present Value.....	\$2,164,540.88

[fol. 495]

COMPANY'S EXHIBIT No. 28

William W. Randolph, M. E.

The Woodhaven Gas Light Company

Street Mains

Size	Lineal feet as of June 30, 1919	Unit price	Estimated cost of reproduction new as of June 30, 1919
1¼"	1,395	\$.45	\$627.75
1½"	186	.50	93.00
2"	10,373	.60	6,223.80
3"	4,178	.96	4,010.88
4"	103,192	1.13	116,606.96
6"	265,973	1.51	401,619.23
8"	65,197	2.04	133,001.88
10"	2,647	2.65	7,014.55
12"	51,722	3.40	175,854.80
24"	8,382	9.57	80,215.74
	<hr/>		<hr/>
	513,245	....	\$925,268.59

[fol. 496]

COMPANY'S EXHIBIT No. 29

William W. Randolph, M. E.

The Woodhaven Gas Light Company

	Services		Estimated cost of reproduction new as of June 30, 1919
Size	Total services as of June 30, 1919	Unit price	
(Main to house:)			
3/4"	2	\$17.63	\$35.26
1"	30	19.61	588.30
1 1/4"	5,294	21.88	115,832.72
1 1/2"	4,842	23.61	114,319.62
2"	35	37.42	1,309.70
3"	6	68.63	411.78
4"	1	88.54	88.54
	<hr/> 10,210	.....	<hr/>\$232,585.92
(Main to curb:)			
1 1/2"	299	6.00	1,794.00
Total	<hr/> 10,509	.....	<hr/>\$234,379.92

[fol. 497]

COMPANY'S EXHIBIT No. 30

William W. Randolph, M. E.

The Woodhaven Gas Light Company

Consumers' Meters in Use

Size	Total meters set as of June 30, 1919		Estimated cost of reproduction new as of June 30, 1919
	Total meters set as of June 30, 1919	Unit price	
3-light	610	\$8.80	\$5,368.00
5 "	13,995	10.56	147,787.20
10 "	68	14.08	957.44
20 "	161	23.76	3,825.36
30 "	63	35.20	2,217.60
45 "	31	55.00	1,705.00
60 "	11	70.40	774.40
100 "	9	110.00	990.00
150 "	2	180.40	360.80
Total	14,950		\$163,985.80
Prepay attachment	403	4.12	1,660.36
Meter locks	305	.43	131.15
Total meters in use			\$165,777.31

[fol. 498]

COMPANY'S EXHIBIT No. 31

William W. Randolph, M. E.

The Woodhaven Gas Light Company

Consumers' Meters in Stock and Shop

Size	Total meters set as of June 30, 1919	Unit price	Estimated cost of reproduction new as of June 30, 1919
3-light	164	\$10.00	\$1,640.00
5 "	102	12.00	1,224.00
10 "	14	16.00	224.00
20 "	3	27.00	81.00
30 "	6	40.00	240.00
45 "	1	62.50	62.50
60 "	1	80.00	80.00
100 "	4	125.00	500.00
Gross Total	295	.....	\$4,015.50
Less 20%			803.10
Net Total			\$3,212.40
Prepay Attachments	109	3.75	408.75
			\$3,621.15

PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT, STATE OF
NEW YORK

Case No. 2376

Petition for the Extension of Gas Mains in the Fourth Ward of
Queens County

Tentatively Revised Appraisal as of December 31, 1919, of the Distribution System (Mains, Services, and Meters) Devoted to Gas Operations in the Franchise District of the Woodhaven Gas Light Company.

Normal Reproduction Cost 12/31/13.....	\$438,635
Extra Allowances for Meter in conformity with Opinion in Cases No. 1787-1807.....	7,470
Physical Property 12/31/13.....	446,105
Pro-rata Additional Allowances in conformity with Opin- ion in Cases No. 1787-1807 for interest during Construc- tion, Other Overheads charged to Capital and Working Capital	57,550
Total Normal Reproduction Cost 12/31/13.....	503,655
Retirements during periods 12/31/13 to 12/31/19.....	18,877
Total Normal Reproduction Cost of property installed prior to 12/31/13 and in place 12/31/19.....	484,778
Cost of additions during period 12/31/13 to 12/31/19....	197,031
Revised Total Normal Reproduction Cost 12/31/19.....	681,809
Accrued Depreciation.....	101,282
Normal Reproduction Cost less Depreciation 12/31/19....	580,527
Annual Depreciation.....	10,323

Inv. No. 1855. Equipment Inspection Bureau. March 22, 1920.
RHM:MC.

COMMISSION'S EXHIBIT No. 33

EXHIBIT 63 (Cases 1787 and 1807)

The Woodhaven Gas Light Company

Appraisal as of December 31, 1913

Summary of Reproduction Cost, Accrued Depreciation, Present Value, and Annual Depreciation of Tangible Property Used by the Woodhaven Gas Light Company, Land Excluded

Account	Reproduction cost	Annual depreciation	Accrued depreciation	Present value
General Structures	\$21,538.13	\$457.50	\$749.31	\$20,788.82
General Equipment	5,890.01	634.34	1,669.20	4,220.81
Trunk Lines and Mains	331,252.81	3,926.35	31,867.08	299,385.73
Gas Services	53,407.10	1,550.91	9,097.60	44,309.50
Gas Meters	53,974.77	1,799.15	11,078.26	42,896.51
Gas Tools and Implements	173.30	20.78	61.24	112.06
Total Tangible Property used, Exclusive of Land	\$466,236.12	\$8,389.03	\$54,522.69	\$411,713.43

Case 1807. Reference 50.6 F. 1.1. Computer: W. F. H. Checker: E. B. Mc. July 6, 1914, A. S.

This is the annual report of the Woodhaven Gas Light Company to the Public Service Commission, First District, for the year ending December 31, 1918. It has been stipulated that only pages 18, 19, 50 and 51 of that report need be printed herein.

Annual Report to the New York Public Service Commission—First District 300A. Comparative General Balance Sheet—Assets Side

Show hereunder the items of the assets side of the general balance sheet of the respondent as of the beginning and those as of the close of the year, classified in accordance with the Uniform System of Accounts for Electrical Corporations and Gas Corporations, and for each item or total show the net change during the year. Figures as of the beginning of the year should be shown in column (a) opposite the appropriate items, and all discrepancies between them and figures reported as of the close of the preceding year should be fully explained; figures as of the close of the year should be shown in column (c); and net changes during the year in column (d).

For definitions of "associated companies" see page 9.

Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year (increase in black, decrease in red) (d)
\$, c.		\$, c.	\$, c.
5,037.71	Cash	8,527.13	3,489.42
	Bills receivable—due on demand		
	Bills receivable—time		
516.97	Accounts receivable from City of New York (for gas or electricity)	558.19	41.22
20,255.23	Consumers' accounts receivable	20,376.49	121.26
1,153.79	Current accounts receivable from associated companies		1,153.79

546.20	Other accounts receivable.....	100.00	446.20
33.32	Interest and dividends receivable.....	33.32	.....
	Other current assets (excluding all materials and supplies).....	.....	.....
<u>27,543.22</u>	Total current assets.....	<u>29,595.13</u>	2,051.91
[fol. 502]	Special Deposits for coupons and other charges (p. 29) :		
26,462.85	Other special deposits (p. 29).....	46,123.82	19,660.97
125.85	Prepayments (p. 29).....	175.13	49.28
.....	Materials and Supplies (p. 26).....	.....	.....
<u>54,131.92</u>	Total floating capital.....	<u>75,894.08</u>	21,762.16
	Miscellaneous Investments (p. 28) :		
	Total miscellaneous investments.....	.....	.....
	Fixed Capital :		
202,618.16	Fixed capital, December 31, 1908—Gas (p. 20).....	202,304.49	313.67
.....	Fixed capital, December 31, 1908—Other departments (p. 20).....	.....	.....
<u>202,618.16</u>	Total Fixed Capital, December 31, 1908 (p. 20).....	<u>202,304.49</u>	313.67
371,283.10	Fixed capital installed since 1908—Gas (p. 22).....	382,393.39	11,110.29
.....	Fixed capital installed since 1908—Other (incl. General) (p. 22).....	.....	.....
<u>371,283.10</u>	Total fixed capital installed since December 31, 1908.....	<u>382,393.39</u>	11,110.29

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Annual Report to the New York Public Service Commission—*Continued*

Balance at beginning of year (a) \$, c.	Item (b)	Balance at close of year (c) \$, c.	Net change during year (increase in black, decrease in red) (d) \$, c.
573,901.26	Total fixed capital—gross investment.....	.....	.....
.....	Accrued amortization of capital—Cr. (p. 36) .....	.....	.....
573,901.26	Total fixed capital—net investment.....	584,697.88	10,796.62
.....	Miscellaneous Temporary Debits:	.....	.....
.....	Total unadjusted debits.....	.....	.....
628,033.18	Grand Total	660,591.96	32,558.78

[fol. 503] Gas and Electrical Corporations—Twelve Months Ended December 31st, 1918

Comparative General Balance Sheet—Liabilities Side

1. Show hereunder the items of the liabilities side of the general balance sheet of the respondent as of the beginning and those as of the close of the year, classified in accordance with the Uniform System of Accounts, and for each item or total show the net change during the year. Figures as of the beginning of the year should be shown in column (a) opposite the appropriate items, and all discrepancies between them and figures reported as of the close of the preceding year should be fully explained; figures as of the close of the year should be shown in column (c); and not changes during the year in column (d).

Entries in columns (a) and (c) must be of amounts *actually outstanding* at the particular dates, in respect of all evidences of debt and all stocks.

Entries in column (b2) for unfunded debt must show the amounts of such debt for each of the several accounts which had matured but had not yet been paid at the close of the year; no account stated subject to discount for prompt payment should closed as matured until after the expiration of the discount period. Entries for unfunded debt in column (c) must include all unfunded debt outstanding at the close of the year, whether due or not yet due. Matured funded debt should be treated as unfunded debt.

Entries in column (b1) must show the total book liability for funded debt and stocks of the several classes. Those in column (b2) for funded debt and stocks must show the amounts which have been only nominally issued to the close of the year, also those that have been reacquired subsequent to actual issue and are held as nominally outstanding as hereinafter defined (p. 30). The entry in (b1) diminished by that in (b2) will give that for (c).

Balance at beginning of year (a)	Item (b)	Amount due and unpaid at close of year (b2)	Balance at close of year (c)	Net change during year (in- crease in black, decrease in red) (d)
\$, c.			\$, c.	
	Unfunded Debt:			
16,548.17	Taxes accrued (pp. 58-59)	26,962.55	36,727.46	20,179.29
157,988.36	Accounts payable to associated companies (p. 34) .....	.....	107,453.80	50,534.56
31,212.96	Consumers' deposits (p. 35) .....	.....	34,422.60	3,209.64
2,496.61	Miscellaneous accounts payable (p. 35) .....	.....	293.80	2,202.81
[fol. 504]				
4,102.68	Interest accrued on funded debt (p. 33) .....	.....	.....	.....
	Interest accrued on unfunded debt (p. 63) .....	.....	6,632.65	2,529.97
	Rent accrued for lease of plant (p. 62) .....	.....	.....	.....
	Other rents accrued (p. 62) .....	.....	.....	.....
	Dividends declared (p. 31) .....	.....	.....	.....
249.30	Other unfunded debt (p. 35)	306.67	57.37
212,598.08	Total unfunded debt	26,962.55	185,836.98	26,761.10

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Annual Report to the New York Public Service Commission—Continued

Funded Debt (pp. 32-33) (b1) Book liability at close of year:		Portion reacquired and paid in only nominally issued (b2)	
Due Lessee Company for Betterments (p. 35)	.....	.....	.....
Due Associated Co.'s for Construction Advances (p. 34)	.....	.....	.....
Reserves (p. 36)	.....	.....	.....
Premiums on stocks and other permanent reserves	.....	.....	.....
•Contingencies	165,113.88	165,113.88	.....
Sinking fund and other contractual reserves	.....	.....	.....
•Accrued amortization of capital	12,846.51	18,337.48	5,490.97
Unamortized prem. on debt	.....	.....	.....
Casualties and insurance reserve	12,270.35	15,770.75	3,500.40
Commercial Metered Lighting and Prepaid Gas in Sus- pense	23,889.53	43,956.02	20,066.49
Other optional reserves, incl. suspense credit balances	.....	.....	.....
Total reserves	214,120.27	243,178.13	29,057.86
Capital Stocks (pp. 30-31):			
Preferred stock	.....	.....	.....
Common stock	20,000.00	20,000.00	.....

Book liability
at close of year
(b1)

.....	Instalments paid in on subscription for stock .....	.....
20,000.00	Total stocks	20,000.00
181,314.83	Corporate Surplus or if red Deficit (p. 49)	211,576.85
628,033.18	Grand Total	660,591.96
		32,558.78

[fol. 505] 2. State hereunder all contingent liabilities of the respondent as of the close of the year, excluding herefrom from liabilities incurred in indorsing ordinary short term commercial paper incident to passing title thereto, but including all accommodation indorsements, as well as all guaranties or assurances of bonds and other long term paper, with full particulars of parties, dates of maturity, amount of principal liability, rates of interest, etc. If the respondent has any offsetting contingent assets, they should be described in connection with the contingent liabilities to which they relate. This statement also includes all judgments against the respondent appealable as of the close of the year or then suspend through appeal. *If there are no such contingent liabilities, state that fact.*

No contingent liabilities.

[fol. 506] Annual Report to the New York Public Service Commission, First District 551. Income Statement

Give the particulars called for from the Income Account of the respondent for the Year and the corresponding figures for the preceding year as finally corrected, with increases or decreases for the year. The entries in this account should be determined in accordance with the rules prescribed in the Uniform System of Accounts, and should be consistent with the details given on the pages referred to.

The last division of the statement, Disposition of Net Income, is provided for the use of such companies as desire to subdivide their appropriation accounts and report in the Income Account for the year such dividends and other appropriations as they may lawfully make from current income rather than from accumulated surplus. Entries in this division are optional.

* See note on page 36.

Matter written in red ink printed in italics.

Annual Report to the New York Public Service Commission—*Continued*

Amount applicable to the preceding year* (a)	Detail (b)	Amount applicable to the year* (c)	Increase or decrease (in red) for the year (d)
Income from Gas or Electric Property:			
\$313,836.06	Operating revenues (p. 52, line 8)	\$360,888.74	\$47,052.68
268,594.71	Operating expenses (p. 52, line 23)	294,876.56	26,281.85
1,533.59	Uncollectible operating revenue (p. 57)	1,714.73	181.14
16,673.92	Taxes assignable to operations (p. 59)	23,848.26	7,174.34
286,802.22	Total revenue deductions	320,439.55	33,637.33
27,033.84	Operating income applicable to corporate and leased properties	40,449.19	13,415.35
Rent for lease of other gas or electric plant (p. 15)			
.....	Joint facility rents (p. 60) .....	.....	.....
.....	Transmission and distribution subway rents (p. 60) .....	.....	.....
.....	Municipal rents and non-tax charges (p. 61) .....	.....	.....
2,450.00	Miscellaneous rents† (p. 61)	2,450.00	.....
.....	Amortization of landed capital (p. 64) .....	.....	.....
2,450.00	Total (items 8-13)	2,450.00	.....

.....	Rent accrued from lease of gas or elec. plant—Cr., (p. 16)	.....	.....
2,450.00	Net rent deduction (credit balance in red)	2,450.00	.....
24,583.84	Bal. of income applicable to corp. prop. (gas or elec.)	37,999.19	13,415.35
Other income:			
.....	Miscellaneous rent revenues† (p. 62)	.....	.....
555.12	Interest revenues (pp. 28, 29, 62)	488.13	66.99
.....	Dividend revenues (p. 28)	.....	.....
.....	Profits from operation of others (p. 63)	.....	.....
.....	Miscellaneous non-operating revenues (p. 62)	.....	.....
555.12	Total (items 19-23)	488.13	66.99
.....	Non-operating revenue deductions (p. 63)	.....	.....
555.12	Total miscellaneous income	488.13	66.99
25,138.96	Gross corporate income (items 17 and 26)	38,487.32	13,348.36

*If respondent's operations did not cover the entire year, state precisely the beginning and end of the period of operations.

†For property used in gas or electric operations.

‡From leased property other than gas or electric plant.

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Annual Report to the New York Public Service Commission—*Continued*

Amount applicable to the preceding year* (a)	Detail (b)	Amount applicable to the year* (c)	Increase or decrease (in red) for the year (d)
	Deductions from gross income:		
.....	Absolute interest on funded debt (p. 33) %	.....	.....
.....	Contingent interest on funded debt (p. 33) %	.....	.....
.....	Interest on debenture stocks (p. 33) §	.....	.....
7,327.42	Miscellaneous interest deductions (p. 63)	7,207.30	120.12
.....	Amortization of debt discount and expense (p. 34) .....	.....	.....
.....	Amortization of premium on debt—Cr. (p. 34) .....	.....	.....
.....	Sinking fund accruals (p. 64) .....	.....	.....
.....	Guaranties of periodic payments (p. 64) .....	.....	.....
.....	Loss on operations of others (p. 63) .....	.....	.....
.....	Other compulsory deductions from income (p. 64) .....	.....	.....
<u>7,327.42</u>	Total	<u>7,207.30</u>	<u>120.12</u>
17,811.54	Net corporate income (loss in red)	31,280.02	13,468.48
[fol. 508]	Disposition of net income:		
.....	Total appropriations of net income .....	.....	.....
<u>17,811.54</u>	Balance transferred to surplus	<u>31,280.02</u>	<u>13,468.48</u>

*If respondent's operations did not cover the entire year, state precisely the beginning and end of the period of operations.

†Includes no interest on funded debt and debenture stocks held in respondent's treasury.

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5.59 SUMMARY OF INCOME FROM OPERATIONS

Statement of Operating Revenues, Operating Expenses, Taxes, Rentals and Income from Operations Applicable to Corporate Properties (Gas and Electric)

Item : Number of supporting schedule (a)	Electric operations			Gas operations	
	Amount (b)	Per kw. hr. sold (c)	Increase or decrease (in red) for the year (d)	Amount (e)	Increase or decrease (in red) for the year (f)
Operating Revenues:					
Sales to the general public.....				\$360,044.38	.9498
Sales to the Municipality.....				844.36	.75
Other operating revenue.....					**
Total	\$ 560			360,888.74	
Operating Expenses, Taxes, etc.					
Generating or manufacturing ex- pense	\$ 570				
Less—Gas or electricity made for as- sociated companies at cost*—Cr...	\$ 553				
Add—Gas or electricity received from associated companies**.....	\$ 553				
Add—Gas or electricity received from other companies.....	\$ 553			207,079.79	.5447
Total production expenses...				207,079.79	.5447

*Or for another department of respondent, as, for example, street-railway.

*Or for another department or respondent, as the case may be.
**Or the amount paid for gas or electricity delivered by associated companies, the agreed portion representing a return upon their investment was as follows (itemized):

Annual Report to the New York Public Service Commission—Continued

Item: Number of supporting schedule (a)	Electric operations			Gas operations		
	Amount (b)	Per kw. hr. sold (c)	Increase or decrease (in red) for the year (d)	Amount (e)	Per M. cu. ft. (f)	Increase or decrease (in red) for the year (g)
Transmission (and electric storage) expenses	\$ 571	.....	.....	34,431.12	.0905	174.24
Distribution expenses	\$ 571	.....	.....	.....	.....	.....
Commercial utilization expenses	\$ 571	.....	.....	.....	.....	165.43
Municipal street lighting expenses	\$ 571	.....	.....	31,538.18	.0829	3,679.55
Commercial administration (551) ..	.....	.....	.....	2,142.43	.0057	15.50
Promotion of business	\$ 572	.....	.....	.....	.....	.....
General expenses (excl. of depreciation)	\$ 572	.....	.....	13,979.09	.0368	4,439.43
*General amortization (842)	\$ 380	.....	.....	5,702.84	.0150	743.36
Total of foregoing (lines (14-22) .....	.....	.....	.....	294,876.56	.7756	26,281.85
Uncollectible bills	\$ 573	.....	.....	1,714.73	.0045	181.14
Tax accruals	\$ 574	.....	.....	23,848.26	.0627	7,174.34
Municipal rents and non-tax charges	\$ 577	.....	.....	.....	.....	.....
Subway duct rents	\$ 576	.....	.....	.....	.....	.....
Joint facility rents	\$ 575	.....	.....	.....	.....	.....
Miscellaneous rents	\$ 577	.....	.....	2,450.00	.0064	.....
Total cost of operation .....	.....	.....	.....	322,889.55	.8492	33,637.33

Rent for lease of gas or electric plant	S. 190		
Amortization of landed capital	S. 599		
Total of foregoing deductions		322,889.55	33,637.33
Operating Income Applicable to Corporate Property (line 8 minus 1. 33)		37,999.19	13,415.35
[fol. 510]			

553. Intercompany Purchases, Sales, etc.

410). Unless elsewhere given in this report (p. 12), the essential provisions of each agreement governing determination of the price must be set forth. Complete information must be given as to points of delivery and points of measurement of all gas or electric energy received from or delivered to other companies engaged in the same business as respondent, and of electric energy supplied to railroad and street railway companies.

In case the space hereunder is insufficient, the statement may be continued on the opposite page.

Show hereunder (1) the particulars of intercompany transactions in respect of gas or electric operations, including absolute sales of gas or electric energy (revenue accounts 411 and 438), gas or electricity supplied under manufacturing agreements (joint production), and gas distributed under agreements giving rise to agents' commissions (account No. 439). Show also (2) particulars called for by the headings concerning intercompany purchases and sales of residuals and of gas or electric appliances, and (3) particulars of electric energy supplied to railroad and street railway companies (account No.

*See note on page 36.

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Annual Report to the New York Public Service Commission—Continued

Purchase or seller and commodity (a)	Quantity (b)	Average price (c)	Total gross price (d)	Abate- ments (e)	Agents' com- mission (f)	Net amount revenues in black, expenses in red) (g)
The Brooklyn Union Gas Co.... Point of delivery—mains of re- spondent. Point of measure- ment—consumers' meters.	414,159,563	.50	\$207,079.79	...	...	\$207,079.79

[fol. 510a]

Gas and Electrical Corporations—Twelve Months Ended December 31st, 1918

160. Directors

1. Give the names and office addresses of all directors of the respondent at the close of the year, and the dates of beginning of service and expiration of terms, and the annual salaries, fees and perquisites of each. If a vacancy exists, that fact should be stated.

If the property of the respondent is controlled by receivers, trustees, committees of bondholders, or others than regularly constituted directors, such receivers, etc., should also be named hereunder with appropriate designations and particulars.

Line No.	Name of director (a)	Office address (b)	Date of begin- ning of service (c)	Date of expi- ration of term (d)	Compensation and remarks (if any) (e)
1	E. R. Chapman.....	80 Broadway, New York	July 2, 1897	Sept. 10, 1919	Fee of \$5 for attendance at each meeting
2	M. D. Chapman.....	do.....	Apr. 17, 1901	do.	
3	A. F. Staniford.....	176 Remsen St., Brooklyn, N. Y.	Apr. 17, 1901	do.	
4	J. H. Jourdan.....	do.....	Oct. 20, 1910	do.	

5 H. E. McGowan.....do.....June 21, 1917 do.

21—282

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2. Give the names (and titles) of all officers of the Board of Directors, Managers, or Trustees of the respondent at the close of the year. Chairman of Board: None. Secretary (or clerk) of Board: H. E. McGowan, Secretary.
3. Name the members of the executive committee of the Board of Directors, Managers, or Trustees of the respondent at the close of the year, naming first the chairman, and state briefly the powers and duties of that committee. None.

161. Officers

Give the titles of the respondent's officers, the names and office addresses of the persons holding such offices at the close of the year, and the date when each entered upon the discharge of the duties of his office.

Line No.	Title of officer (a)	Date of entry upon office (b)	Name of person holding office at close of year (c)	Office address (d)	Remarks (e)
31	President	July 2, 1897	E. R. Chapman.....	80 Broadway, New York.....	
32	Vice-President	Oct. 20, 1910	A. F. Staniford.....	176 Remsen St. Brooklyn, N. Y....	

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Annual Report to the New York Public Service Commission—*Continued*Remarks
(e)Office address
(d)

Line No.	Title of officer (a)	Date of entry upon office (b)	Name of person holding office at close of year (c)	Office address (d)	Remarks (e)
33	Second Vice-President.				
34					
35	Secretary	June 21, 1917	H. E. McGowan	do.	
36	Assistant Secretary	Oct. 20, 1910	F. R. Wogan	do.	
37	Treasurer	Sept. 27, 1917	H. Wellington	do.	
38	Assistant Treasurer	June 1, 1916	T. P. Payne	do.	
39	Auditor	Oct. 20, 1910	J. Gilmer	do.	
40	Asst Auditor	Apr. 15, 1915	T. P. Payne	do.	
41	Attorney or General Counsel				
42	Claim Agent	June 1, 1914	Cullen & Dykman	177 Montague St. Brooklyn, N. Y.	
43	2nd Ass't Treasurer	July 25, 1918	G. M. Kirehmer	176 Remsen St. Brooklyn, N. Y.	
44	Manager	Nov. 28, 1898	J. W. Cornwell, Jr.	do.	
45	Assistant General Manager.		H. A. Lowell	14-20 Union Ave. Jamaica, N. Y.	
46	Engineer	Oct. 15, 1908	J. H. Jourdan	176 Remsen St. Brooklyn, N. Y.	
47	General Superintendent.				
48	Purchasing Agent	Dec. 12, 1910	G. W. Gatehouse	do.	
49					
50					

[Similar entries appear on page 7 of the relator's report for 1919]

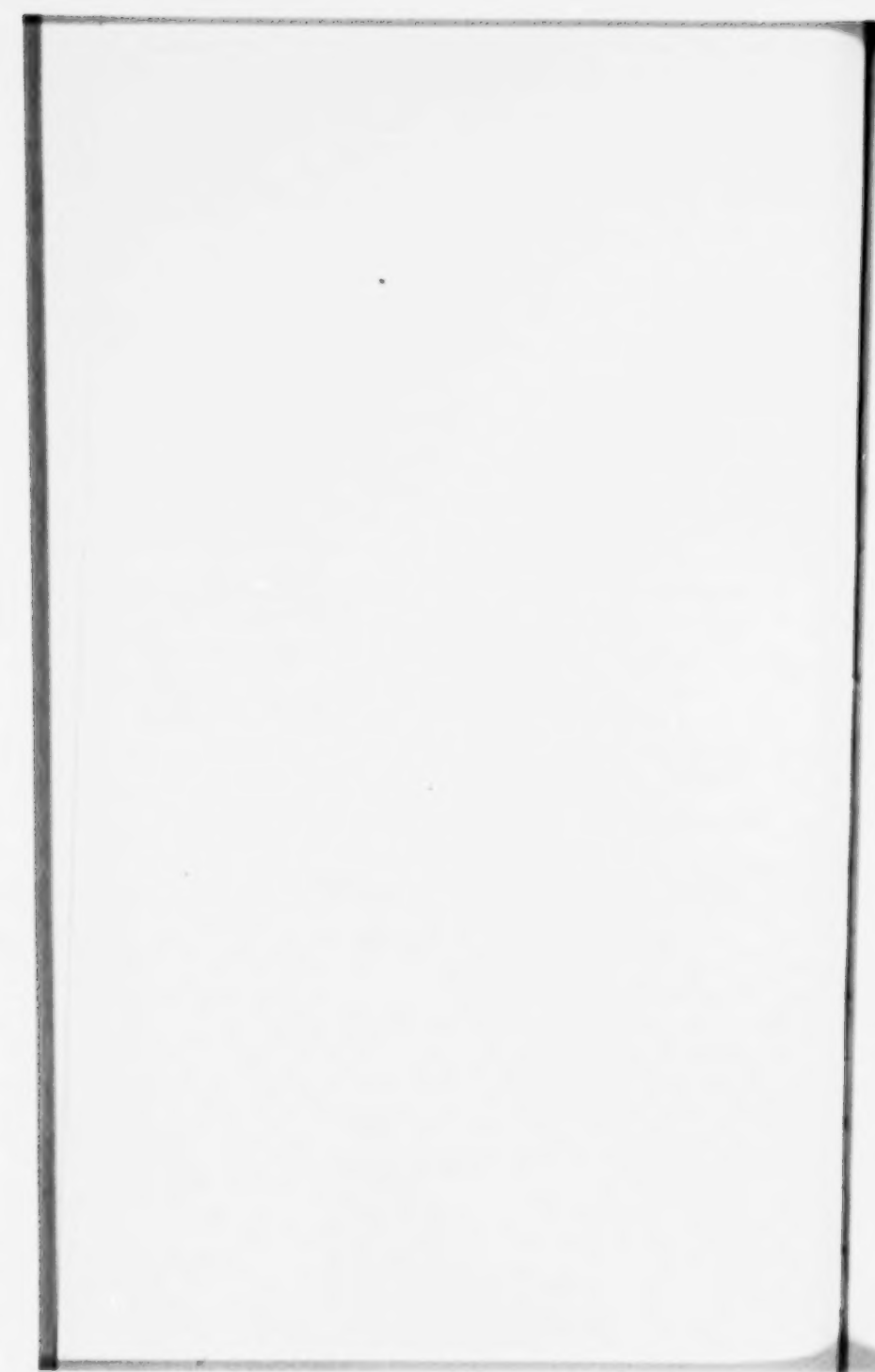
(Here follows statement of accounts owing to associated companies, marked side folio page 510b.)

[fol. 510b]

368. Bills and Accounts Owing to Associated Companies (356, 357)

Show hereunder full particulars concerning the respondent's unfunded obligations to its controlling, affiliated, and controlled and other subsidiary corporations, including loans repaid within the year. This statement includes obligations on open accounts, as well as notes and other commercial paper whether negotiable or non-negotiable, which by the terms of its creation matures one year or less after the date of creation or after demand, and should be subdivided into the classes "Working Advances" and "Construction or Long Term Advances," when there is an understanding that advances of the second class are to be repaid by the issue of respondent's permanent or long-term securities. It should also include every credit item pertaining to associated companies included under any balance sheet caption not elsewhere analyzed (specifying such caption).

Line No.	Name of creditor company (a)	Principal advanced during the year			Interest				Principal repaid during year			Reference to description of property pledged (l)
		Amount of loan (b)	Date of advance (c)	Date of maturity (d)	Rate % (e)	Dates due (f)	Amount accrued during year (g)	Amount paid during year (h)	Amount (i)	Date of repayment (j)	Amount owing at close of year (k)	
21	The Brooklyn Union Gas Co.....	\$225,309.63	.....	.....	3	.....	\$3,920.14	\$3,920.14	\$276,596.81	.....	\$102,748.40	.....
22	The Jamaica Gas Light Co.....	54,699.62	.....	.....	..	.....	.....	.....	54,028.95	.....	4,623.45	.....
23	Richmond Hill and Queens Co. G. L. Co...	81.95	.....	.....	..	.....	.....	.....	.....	.....	81.95	.....
The balances of the above accounts on Jan. 1, 1918 were as follows:												
	B. U. G. Co.....	\$154,035.58										
	Jamaica G. L. Co.....	3,952.78										
		\$157,988.36										
Total		\$280,091.20					\$3,920.14	\$3,920.14	\$330,625.76		\$107,453.80	



1. Show hereunder the balances at the beginning and the end of the fiscal year, and in detail the debits and credits made during the year in respect of each of the reserve accounts and sub-accounts of the respondent grouped in the following order:

- (371) Premiums on Stocks.
- (372) Other Permanent Reserves.
- Contractual Reserves (Schedule A, paragraph 40).
- (374) Accrued Amortization of Capital.
- (376) Other Required Reserves.
- (381) Casualties and Insurance Reserve.
- (382) Other Optional Reserves.

State the purpose of each reserve not defined in the Uniform System of Accounts, and in appropriate footnotes describe each sinking fund and other contractual reserve, giving the date of establishment and the purpose of each fund covered by such reserve.

The entries in column (b) should show clearly the facts resulting in charges and credits to the various reserve accounts. In respect of depreciation or amortization there should be shown the amount provided by the company's rule and also the cost of actual repairs; if the difference between these amounts is not credited to the reserve, explanation should be made.

2. Give similar data in respect of each suspense credit balance at the beginning and the end of the fiscal year.

Annual Report to the New York Public Service Commission—(continued)

Line No.	Name of Reserve (a)	Transactions (b)		Dr. (c)	Cr. (d)
		\$	c.	\$	c.
30	Commercial Metered Lighting and Prepaid Gas in Suspense.....				
	Balance January 1, 1918.....				23,889.53
	For the difference between the price of gas sold to private consumers and through prepayment meters at \$1.00 per M cu. ft. as per bills rendered and 95c. per M cu. ft. as ordered by the Public Service Commission, order dated May 26, 1916:				
	379,063.250 cubic feet at 5c. per M cu. ft. from Jan. 1 to Dec. 31, 1918.....			18,953.15	
	Interest on money deposited with the Bank of Long Island.....			1,113.34	
	(See page 29 for amount of deposit made by order of the Supreme Court.)				
	Balance Dec. 31, 1918.....				43,956.02

This is the annual report of the Woodhaven Gas Light Company to the Public Service Commission, First District, for the year ending December 31, 1919. It has been stipulated that only pages 4, 18, 19, 34, 36, 50, and 51 of that report need be printed herein.

Annual Report to the New York Public Service Commission, First District

300A. Comparative General Balance Sheet—Assets Side

Show hereunder the items of the assets side of the general balance sheet of the respondent as of the beginning and those as of the close of the year, classified in accordance with the Uniform System of Accounts for Electrical Corporations and Gas Corporations, and for each item or total show the net change during the year. Figures as of the beginning of the year should be shown in column

(a) opposite the appropriate items, and all discrepancies between them and figures reported as of the close of the preceding year should be fully explained; figures as of the close of the year should be shown in column (c); and net changes during the year in column (d).

For definitions of "associated companies" see page 9.

Net change
during year
increase
in black,
decrease
in red)
(d)

Balance
at close
of year
(c)

Current Assets (p. 29) :

\$8,527.13	Cash	\$19,242.82	\$10,715.69
558.19	Accounts receivable from City of New York (for gas or electricity)	685.05	126.86
20,376.49	Consumers' accounts receivable	24,589.08	4,212.59
.....	Current accounts receivable from associated companies	7,986.89	7,986.89
100.00	Other accounts receivable	100.00	.....

Annual Report to the New York Public Service Commission—Continued

Balance at beginning of year (a)	Item (b)	Balance at close of year (c)	Net change during year increase in black, decrease in red) (d)
33.32	Interest and dividends receivable	152.29	118.97
29,595.13	Other current assets (excluding all materials and supplies)		
	Total current assets	52,756.13	23,161.00
46,123.82	Special deposits for coupons and other charges (p. 29)		
175.13	Other special deposits (p. 29)	5,069.38	41,054.44
	Prepayments (p. 29)	277.65	102.52
	Materials and Supplies (p. 26)		
75,894.08	Total floating capital	58,103.16	17,790.92
[fol. 512]			
	Miscellaneous Investments (p. 28)		
	Other investment securities	17,000.00	17,000.00
	Total miscellaneous investments	17,000.00	17,000.00
	Fixed capital:		
202,304.49	Fixed capital, December 31, 1908—Gas (p. 20)	198,876.39	3,428.10
	Fixed capital, December 31, 1908—Other departments (p. 20)		
202,304.49	Total Fixed Capital, December 31, 1908 (p. 20)	198,876.39	3,428.10

.....	Fixed capital installed since 1908—Electric (p. 21)		
382,393.39	Fixed capital installed since 1908—Gas (p. 22)	421,217.54	38,824.15
.....	Fixed capital installed since 1908—Other (incl. General) (p. 22)...	.....	.....
<u>382,393.39</u>	Total fixed capital installed since December 31, 1908.....	<u>421,217.54</u>	<u>38,824.15</u>
<u>584,697.88</u>	Total fixed capital—gross investment	<u>620,093.93</u>	<u>35,396.05</u>
.....	Accrued amortization of capital—Cr. (p. 36) .....	.....	.....
<u>584,697.88</u>	Total fixed capital—net investment	<u>620,093.93</u>	<u>35,396.05</u>
.....	Miscellaneous Temporary Debits .....	.....	.....
<u>660,591.96</u>	Grand Total	<u>695,197.09</u>	<u>34,605.13</u>

Matter written in red ink printed in italics.

fol. 512a] Gas and Electrical Corporations—Twelve Months Ending
December 31st, 1919

151. Identity of Respondent

1. Give the exact name by which the respondent was known in law at the close of the year. Use the initial word the when and only when it is a part of the name, and distinguish between the words railroad and railway, light, lighting, etc. The name here stated should be used uniformly throughout this report in designating the respondent. If it is desired to use an abbreviation in the later portions of the report, the standard abbreviation to be used (preceded by the words "standard abbreviation") should be given following the complete name. —.

2. State whether the respondent was at the close of the year a corporation, a joint-stock association, a firm or partnership, or an individual. If it was none of these, state fully its character and makeup. If the report is made by receivers, trustees, a committee of bondholders, or any others than the beneficial owners, names and facts (including authority under which possession is had) should be stated with precision. —.

3. If the respondent was at the close of the year a corporation or association, give the location (including street and number) of its corporate or associate office on that date. —.

4. Give the location (including street and number) of the main business office of the respondent at the close the year. —.

5. Give (a) the date of organization of the respondent. If incorporated under a special charter, give (b) the date of passage of the act; if under a general law, give (c) the date of filing certificate of organization; if a reorganization has been effected, give also (d) the date of reorganization; if a receivership or other trust, give also (e) date of creation of such receivership or other trust, and (f) date when possession under it was acquired; if a partnership, give (g) date of formation, and also (h) names in full of present partners, and the extents of their respective interests at the close of the year. —.

6. State under the laws of what Government (Federal, State, or Provincial) the respondent was organized; if more than one, name all; give reference to each statute and to all amendments thereof. Give the like particulars for all amendments of the charter of the respondent. —.

7. State (a) whether the respondent is a consolidated or merging company, and if so name (b) all constituent and merged companies, giving reference (c) to the charters of each and (d) all amendments of the same. Give (e) the date and (f) authority for each consolidation or merger, and make reference to special or general laws

under which each consolidation was effected. Specify (g) the Government under the laws of which each company consolidated or merged into the respondent was organized; give references to (h) the charters of each, and to (i) all amendments of them. Distinguish carefully between mergers and consolidations. For the purpose of this report, a merger may be defined as the absorption of one of two existing corporations by the other in such wise that the merged or absorbed corporation ceases to exist as a legal entity, its property passing to the merging or absorbing corporation, which assumes all of the merged corporation's obligations. A consolidation may be defined as the union of two or more existing corporations into a new corporation, which, through the consolidation, acquires all of the property of the uniting corporations, assumes all of their obligations, and issues its capital stocks in exchange for those of the uniting corporations in ratios fixed in the agreement for consolidation, after completion of which both or all of the consolidating corporations cease to exist as legal entities. Cases in which corporations have become inactive and have been absorbed through ownership or control of capital stock, or through leases of more than 100 years, or otherwise, where such corporations do not keep up separate organizations even for financial purposes, and where no distinction is made in operating or accounting and the original separate incorporation is completely ignored may be included here if fully explained in the answer to this and the following inquiry. —.

8. State (a) whether the respondent is a reorganized company, and if so give (b) the name of the original corporation and (c) refer to the laws under which it was organized; state (d) the occasion of the reorganization, whether because of foreclosure of mortgage or otherwise, giving particulars. —.

9. State whether or not the respondent during the year conducted any part of its business within the State of New York under a name or names other than that shown in response to inquiry No. 1, above; and if so, give full particulars. —.

9. Give the name, title and office address of the officer of the respondent to whom should be addressed any correspondence concerning this report. —.

[fol. 512b] Annual Report to the New York Public Service Commission—First District

155. Important Changes During the Year

Hereunder state the following matters:

11. All contracts, agreements, arrangements, etc., with gas, electrical or other companies or persons, which were entered into or became effective at any time during the year, except contracts, agreements or arrangements for service at the company's ordinary rates.

If such agreements are in writing a copy of each should be transmitted with the report unless already filed with the Commission.

11. The rate paid to The Brooklyn Union Gas Company for gas purchased was changed from 50¢ per M to 65¢ per M, effective Jan. 1, 1919. The Public Service Commission was notified of the change on Jan. 24, 1919. The rate of interest paid on the open account with the Brooklyn Union Gas Company was changed from 3% to 6%, effective Jan. 1, 1919.

(Here follows statement of bills and accounts owing to associated companies, marked side folio page 512c.)

[fol. 512c]

368. Bills and Accounts Owing to Associated Companies (356, 357).

Show hereunder full particulars concerning the respondent's unfunded obligations to its controlling, affiliated, and controlled and other subsidiary corporations, including loans repaid within the year. This statement includes obligations on open accounts, as well as notes and other commercial paper whether negotiable or non-negotiable, which by the terms of its creation matures one year or less after the date of creation or after demand, and should be subdivided into the classes "Working Advances" and "Construction or Long Term Advances," when there is an understanding that advances of the second class are to be repaid by the issue of respondent's permanent or long-term securities. It should also include every credit item pertaining to associated companies included under any balance sheet caption not elsewhere analyzed (specifying such caption).

Name of Creditor Company (a)	Principal advanced during the year			Interest				Principal repaid during year		Amount owing at close of year (k)	Reference to description of property pledged (l)
	Amount of loan (b)	Date of advance (c)	Date of maturity (d)	Rate % (e)	Dates due (f)	Amount accrued during year (g)	Amount paid during year (h)	Amount (i)	Date of repayment (j)		
21 The Brooklyn Union Gas Co.....	\$319,587.70	.....	.....	6	.....	\$6,095.86	\$6,095.86	\$303,037.21	.....	\$119,298.89	.....
22 Richmond Hill & Queens County Gas Light	497.50	.....	.....	..	.....	.....	.....	500.37	.....	79.28	.....
23 The Jamaica G. Lt. Co.....	88,049.10	.....	.....	..	.....	.....	.....	92,672.55	.....	.....	.....
The balances of the above accounts Jan. 1, 1919 were as follows:											
B. U. G. Co.....	\$102,748.40										
R. H. Co.....	81.95										
J. Co.	4,623.45										
	107,453.80										
Total	\$408,134.50										
						\$6,095.86	\$6,095.86	\$396,210.13	.....	\$119,378.17	.....



[fol. 512d]

380. Reserves

1. Show hereunder the balances at the beginning and the end of the fiscal year, and in detail the debits and credits made during the year in respect of each of the reserve accounts and sub-accounts of the respondent grouped in the following order:

- (371) Premiums on Stocks.
- (372) Other Permanent Reserves.
Contractual Reserves (Schedule A, paragraph 40).
- (374) Accrued Amortization of Capital.
- (376) Other Required Reserves.
- (381) Casualties and Insurance Reserve.
- (382) Other Optional Reserves.

State the purpose of each reserve not defined in the Uniform System of Accounts, and in appropriate footnotes describe each sinking fund and other contractual reserve, giving the date of establishment and the purpose of each fund covered by such reserve.

The entries in column (b) should show clearly the facts resulting in charges and credits to the various reserve accounts. In respect of depreciation or amortization there should be shown the amount provided by the company's rule and also the cost of actual repairs; if the difference between these amounts is not credited to the reserve, explanation should be made.

2. Give similar data in respect of each suspense credit balance at the beginning and the end of the fiscal year.

Annual Report to the New York Public Service Commission—Continued

Line No.	Name of Reserve (a)	Transactions (b)	Dr. (c)		Cr. (d)	
			\$	c.	\$	c.
23	Commercial Metered Lighting and Pre- paid Gas in Suspense.....	Balance Jan. 1, 1919..... For the difference between the price of gas sold to private consumers and through prepayment meters at \$1.00 per M cu. ft., as per bills rendered and 95¢ per M cu. ft. as ordered by the Public Service Com- mission order dated May 26, 1916; 149,666.250 cu. ft. @ 5¢ per M. cu. ft., from Jan. 1 to April 30, 1919..... Interest on money deposited with the Bank of Long Island.....				43,956.02
					7,483.31	
					876.74	
		Balance Dec. 31, 1919.....			52,316.07	

[Col. 513]

Gas and Electrical Corporations—Twelve Months Ended December 31, 1919

Comparative General Balance Sheet—Liabilities Side

1. Show hereunder the items of the liabilities side of the general balance sheet of the respondent as of the beginning and those at the close of the year classified in accordance with the Uniform System of Accounts, and for each item or total show the net change during the year. Figures as of the beginning of the year should be shown in column (a) opposite the appropriate items, and all discrepancies between them and figures reported as of the close of the preceding year should be full explained; figures as of the close of the year should be shown in column (c); and net changes during the year in column (d).

Entries in columns (a) and (c) must be of amounts actually outstanding at the particular dates, in respect of all evidences of debt and all stocks.

Entries in column (b2) for unfunded debt must show the amounts of such debt for each of the several accounts which had matured but had not yet been paid at the close of the year; no account stated subject to discount for prompt payment should be classed as matured until after the expiration of the discount period. Entries for unfunded debt in column (c) must include all unfunded debt outstanding at the close of the year, whether due or not yet due. Matured funded debt should be treated as unfunded debt.

Entries in column (b1) must show the total book liability for funded debt and stocks of the several classes. Those in column (b2) for funded debt and stocks must show the amounts which have been only nominally issued to the close of the year, also those that have been reacquired subsequent to actual issue and are held as nominally outstanding as hereinafter defined (p. 30). The entry in (b1) diminished by that in (b2) will give that for (c).

Balance at beginning of year (a)	Item (b)	Amount due and un- paid at close of year (b2)	Balance at close of year (c)	Net change during year (Increase in black, decrease in red) (d)
Unfunded debt:				
836,727.46	Taxes accrued (pp. 58-59)	841,739.33	843,909.34	86,881.88
107,453.80	Accounts payable to associated companies (p. 34)		119,378.17	11,924.37
34,422.60	Consumers' deposits (p. 35)		40,311.43	5,888.83
293.80	Miscellaneous accounts payable (p. 35)		364.21	70.41
	Interest accrued on unfunded debt (p. 33)			
[fol. 514]				
6,632.65	Interest accrued on unfunded debt (p. 63)		9,808.81	3,176.16
	Other rents accrued (p. 62)			
	Dividends declared (p. 31)			
306.67	Other unfunded debt (p. 35)		414.40	107.73
185,836.98	Total unfunded debt	41,739.33	213,886.36	28,049.38

Annual Report to the New York Public Service Commission—*Continued*

Book liability at close of year (b1)	Portion reacquired and port'n only nom- inally issued (b2)	
Funded debt (pp. 32-33) :		
Mortgage bonds		
Collateral trust bonds		
Miscellaneous funded debt		
Receipts outstanding for funded debt		
Due Lessee Company for Betterments (p. 35)		
Due Associated Co's for Construction Advances (p. 34)		
Total bonded and permanent debt		
Reserves (p. 36) :		
Premiums on stocks and other permanent reserves ..		
*Accrued amortization of capital		22,291.42
*Contingencies		165,113.88
Casualties and insurance reserve		18,828.08
Commercial Metered Lighting and Prepaid Gas in Suspense		
Other optional reserves, incl. suspense credit balances ..		52,316.07
Total reserves		258,549.45
18,337.48		3,953.94
165,113.88		3,057.33
15,770.75		
43,956.02		8,360.05
243,178.13		15,371.32

Capital Stocks (pp. 30-31):

Preferred stock	.....	.....	.....
Common stock	.....	20,000.00	20,000.00
Instalments paid in on subscriptions for stocks	.....	.....	.....
Total stock	.....	20,000.00	20,000.00
Corporate surplus or (if red) Deficit (p. 49)	.....	202,761.28	8,815.57
Grand Total	.....	695,197.09	34,605.13

[fol. 515] 2. State hereunder all contingent liabilities of the respondent as of the close of the year, excluding herefrom liabilities incurred in indorsing ordinary short term commercial paper incident to passing title thereto, but including all accommodation indorsements, as well as all guaranties or assurances of bonds and other long term paper, with full particulars of parties, dates of maturity, amount of principal liability, rates of interest, etc. If the respondent has any offsetting contingent assets, they should be described in connection with the contingent liabilities to which they relate. This statement also includes all judgments against the respondent appealable as of the close of the year or then suspended through appeal. *If there are no such contingent liabilities, state that fact.* For Contingent Liabilities see slip attached.

Amount of Bond in which The Woodhaven Gas Light Company joins with The Brooklyn Union Gas Company in a penal sum equal to the amount of money, United States Liberty Bonds and interest, withdrawn from the Bank of Long Island in accordance with Supreme Court order dated June 30, 1919—interest at six (6%) per cent.

Bonds	\$102,154.92	Interest	\$1,532.34
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*See note on page 26.

Matter written in red ink printed in italic.

[fol. 516]

Page 50, 1919 Annual Report

551. Income Statement

Give the particulars called for from the Income Account of the respondent for the year and the corresponding figures for the preceding year as finally corrected, with increases or decreases for the year. The entries in this account should be determined in accordance with the rules prescribed in the Uniform System of Accounts, and should be consistent with the details given on the pages referred to.

The last division of the statement, Disposition of Net Income, is provided for the use of such companies as desire to subdivide their appropriation accounts and report in the Income Account for the year such dividends and other appropriations as they may lawfully make from current income rather than from accumulated surplus. Entries in this division are optional.

Income from Gas or Electric Property			
Amount applicable to the preceding year ^a (a)	Detail (b)	Amount applicable to the year ^a (c)	Increase or decrease (in red) for the year ^a (d)
\$360,888.74	Operating revenues (p. 52, line 8).....	\$397,116.00	\$36,227.26
294,876.56	Operating expenses (p. 52, line 23).....	374,015.25	79,138.69
1,714.73	Uncollectible operating revenue (p. 57).....	1,556.78	157.95
23,848.26	Taxes assignable to operations (p. 59).....	17,294.04	6,554.22
320,439.55	Total revenue deductions.....	392,866.07	72,426.52
40,449.19	Operating income applicable to corporate and leased properties.....	4,249.93	36,199.26
2,450.00	Miscellaneous rents # (p. 61).....	.....	.....
2,450.00	Total.....	2,450.00	.....
2,450.00	Net rent deduction (credit balance in red).....	2,450.00	.....
37,999.19	Bal. of income applicable to corp. prop. (gas or elec.).....	1,799.93	36,199.26

Other Income

488.13	Interest revenues (pp. 28, 29, 62)	1,005.96	517.83
488.13	Total (items 19-23)	1,005.96	517.83
488.13	Total miscellaneous income	1,005.96	517.83
38,487.32	Gross corporate income (items 17 and 26)	2,805.89	35,681.43

Deductions From Gross Income

7,207.30	Miscellaneous interest deductions (p. 63)	10,639.78	3,432.48
7,207.30	Total	10,639.78	3,432.48
31,280.02	Net corporate income (loss in red)	7,833.89	39,113.91
31,280.02	Balance transferred to surplus	7,833.89	39,113.91

*If respondent's operations did not cover the entire year, state precisely the beginning and end of the period of operations.
 ‡For property used in gas or electric operations.
 Matter written in red ink printed in italics.

Annual Report to the New York Public Service Commission—*Continued*

[fol. 517]

Gas and Electrical Corporations—Twelve Months Ended December 31st 1919

552. Summary of Income from Operations

Statement of Operating Revenues, Operating Expenses, Taxes, Rentals, and Income from Operating Applicable to Corporate Properties (Gas and Electric)

Item: Number of supporting schedule (a)	Electric operations			Gas operations		
	Amount (b)	Per kw. hr. sold (c)	Increase or de- crease (in red) for the year (d)	Amount (e)	Per M cu. ft. (f)	Increase or decrease (in red) for the year (g)
Operating revenues:						
Sales to the general public.....	.....	.....	.....	\$382,818.81	.9804	\$22,774.43
Sales to the Municipality.....	.....	.....	.....	635.20	.75	209.16
Sales to railroads and street railways.....	\$ 553	.....	.....	.....	.....	.....
Sales to other distributors.....	\$ 553	.....	.....	.....	.....	.....
Miscellaneous high-tension sales.....	.....	.....	.....	.....	.....	.....
Other operating revenue.....	.....	.....	.....	13,661.99	.....	13,661.99
Total	\$ 560	.....	.....	397,116.00	.....	36,227.26
Operating expenses, taxes, etc.:						
Generating or manufacturing expense.....	\$ 570	.....	.....	.....	.....	.....
Less—Gas or electricity made for associated com- panies at cost*—Cr.....	\$ 553	.....	.....	.....	.....	.....

Add—Gas or electricity received from associated companies**	.....	.....	.....	.....
Add—Gas or electricity received from other companies	.....	277,125.06	7082	70,045.27
Total production expenses.....	.....	277,125.06	7082	70,045.27
Transmission (and electric storage) expenses..	\$ 571	.....	.....	3,794.98
Distribution expenses	\$ 571	38,226.10	.0977	.....
Commercial utilization expenses.....	\$ 571	.....	.....	16.00
Municipal street lighting expenses.....	\$ 571	19.11	.0001	4,157.77
Commercial administration (551)	\$ 571	35,695.95	.0913	1,457.56
Promotion of business.....	\$ 572	3,599.99	.0091	499.66
General expenses (excl. of depreciation)	\$ 572	13,479.43	.0344	166.77
*General amortization (842)	\$ 380	5,869.61	.0150	.....
Total of foregoing (lines 14-22) .....	.....	374,015.25	.9558	79,138.69
Uncollectible bills.....	\$ 573	1,556.78	.0040	157.95
Tax accruals	\$ 574	17,294.04	.0442	6,554.22
Municipal rents and non-tax charges.....	\$ 577	.....	.....	.....
Subway duct rents	\$ 576	.....	.....	.....
Joint facility rents	\$ 575	.....	.....	.....
Miscellaneous rents	\$ 577	2,450.00	.0062	.....
Total cost of operation.....	.....	395,316.07	1.0102	72,426.52

*Or for another department of respondent, as, for example, street-railway.

**Of the amount paid for gas or electricity delivered by associated companies, the agreed portion representing a return upon their investment was as follows (itemized):

Matter written in red ink printed in italics.

Annual Report to the New York Public Service Commission—Continued

Item: Number of supporting schedule (a)	Electric operations			Gas operations		
	Amount (b)	Per kw. hr. sold (c)	Increase or de- crease (in red) for the year (d)	Amount (e)	Per M cu. ft. (f)	Increase or decrease (in red) for the year (g)
Rent for lease of gas or electric plant.....	\$ 190	.....	.....	.....	.....	.....
Amortization of landed capital.....	\$ 599	.....	.....	.....	.....	.....
Total of foregoing deductions.....	.....	.....	.....	395,316.07	1.0102	.....
Operating Income Applicable to Corporate Prop- erty (line 8 minus 1.33).....	.....	.....	.....	1,799.93	.....	36,199.26
[fol. 518]	553. Intercompany Purchases, Sales, etc.					

Show hereunder (1) the particulars of intercompany transactions in respect of gas or electric operations, including absolute sales of gas or electric energy (revenue accounts 411 and 438), gas or electricity supplied under manufacturing agreements (joint production), and gas distributed under agreements giving rise to agents' commissions (account No. 439). Show also (2) particulars called for by the headings concerning intercompany purchases and sales of residuals and of gas or electric appliances, and (3) particulars of electric energy supplied to railroad and street railway companies (account No. 410). Unless elsewhere given in this report (p. 12), the essential provisions of each agreement governing the determination of the price must be set forth. Complete information must be given as to points of delivery and points of measurement of all gas or electric energy received from or delivered to other companies engaged in the same business as respondent, and of electric energy supplied to railroad and street railway companies.

In case the space hereunder is insufficient, the statement may be continued on the opposite page.

Purchaser or seller and commodity (a)	Quantity (b)	Average price (c)	Total gross price (d)	Agents' com- mission (f)	Net amount (revenues in black expenses in red) (g)
The Brooklyn Union Gas Co. Point of delivery—mains of re- spondent. Points of measure- ment—consumers' meters.	426,346.247	.65	\$277,125.06	.....	\$277,125.06

Matter written in red ink printed in italics.

[fols. 519-522]

Schedule C

[Title omitted]

MEMORANDUM OPINION—Omitted; printed side page 19 ante.

[fols. 523-525]

Schedule D

[Title omitted]

FINAL ORDER—Omitted; printed side page 16 ante.

Case No. 2376

[fol. 526]

Schedule E

Case #2376

[Title omitted]

PETITION FOR REHEARING

The Woodhaven Gas Light Company received a copy of the order made the 20th day of April, 1920, by this Commission in the above entitled proceeding directing it to extend its gas mains and services to serve with gas the residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton in the Fourth Ward of the Borough of Queens. It believes the Commission has erred in this proceeding and that the order is not authorized by the Public Service Commissions Law or any other law, and is in violation of the Federal and State Constitutions and contrary to the rule laid down by the Supreme Court of the United [fol. 527] States in the case of New York and Queens Gas Co. vs. McCall, 245 U. S., 345.

The Company cannot accept the said order and it will not be obeyed and respectfully petitions this Commission to grant it a rehearing.

As grounds for its petition the Woodhaven Gas Light Company respectfully shows

1. The order is contrary to law in that it directs an extension of mains which is not a reasonable improvement or a reasonable extension within the meaning of subdivisions 2 of Section 66 of the Public Service Commissions Law.

(a) The Commission has made no findings.

2. The cost of the extension required by the order of the Commission for labor and material only exclusive of overheads would be at least \$341,646.69.

3. The Commission has either failed to consider or has disregarded the operating revenue and expenditures of the Company. The uncontradicted evidence is that the expenditures of the Company exceed its revenues and that the Company is serving its existing consumers at a loss.

4. The Company is financially unable to comply with the order. It has no funds and upon information and belief is unable to borrow any.

5. While the cost of the extension will be at least \$341,646.69 the "tentative" valuation of the Company's entire property was fixed by the Commission's engineer at \$580,527.00. The valuation claimed by the Company, excluding going value, is at least \$1,665,031.45.

6. The order requires extension of gas mains to Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton and further provides that the determination of the Commission is without [fol. 528] out prejudice to further proceedings for the extension of mains to Rosedale, Rosedale Terrace, St. Albans, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bayview Landing. This simply means that if the extension prescribed in the order was made it would undoubtedly be followed by orders to provide for extensions to all the above named neighboring communities at an additional cost of at least \$564,544.84 and would make a total cost for the entire extension of at least \$907,191.53.

7. That the Commission in adopting the order acted contrary to the evidence and to the weight of evidence. That the order of the Commission was an unlawful and arbitrary exercise of power.

Wherefore, your petitioner prays for a rehearing to submit proof of the facts hereinbefore stated.

The Woodhaven Gas Light Company, by Henry E. McGowan, Secretary.

[fol. 529] Jurat showing the foregoing was duly sworn to by Henry E. McGowan omitted in printing.

[fols. 530 & 531]

Schedule F

Case No. 2376

[Title omitted]

Order Denying Rehearing—Omitted; printed side page 23 ante

[fol. 532] IN SUPREME COURT, APPELLATE DIVISION

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on the 17th day of November, 1922.

Present:

Hon. John Proctor Clarke, Presiding Justice; Hon. Victor J. Dowling, Hon. Alfred R. Page, Hon. Samuel Greenbaum, Hon. Edward R. Finch, Justices.

8341

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE WOODHAVEN
GAS LIGHT COMPANY, Relator,

against

THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Respondent

ORDER DISMISSING WRIT OF CERTIORARI

The above named relator having sued out a writ of certiorari on or about the 16th day of July, 1920, to review the proceedings of the above named respondent relative to the extension of the petitioner's gas mains and services to the localities in said writ mentioned in the Fourth Ward of the Borough of Queens, City of New York, and the said writ having duly come on to be heard,

Now, after hearing Mr. Jackson A. Dykman, of counsel for relator, in support of said writ, and Mr. Edward M. Deegan, of counsel for the P. S. C. of the State of New York, respondent, in opposition [fol. 533] thereto, and Mr. James E. Finegan, of counsel for Central Gas Company of the 4th Ward, amicus curiæ, and due deliberation having been had thereon,

It is unanimously ordered that the said writ of certiorari be and the same hereby is dismissed, and that the proceedings of the respondent be and the same hereby are in all things confirmed with 50 dollars costs and disbursements to the respondent. —

Enter.

J. P. C.

[fol. 534] IN SUPREME COURT OF NEW YORK

OPINION OF APPELLATE DIVISION

PAGE J:

"The relator is a public service corporation which has a franchise to lay its mains in the streets and supply residents of the town of Jamaica, now the fourth ward of the borough of Queens.

"The relator manufactures no gas, but purchases all its distributes from the Brooklyn Union Gas Company, which owns all the stock of

the relator, and whose treasurer is the relator's president. The Brooklyn Company charged the relator fifty cents per 1,000 cubic feet in 1918, but increased the price to sixty-five cents on January 1, 1919. The relation between the Brooklyn Company and three other companies similarly situated was very aptly described by Commissioner Hayward in *Matter of Hermann v. Newton Gas Co.* (7 P. S. C. Rep. 1st Dist. 101) in the following language, which was quoted with approval by Mr. Justice Greenbaum in *Jamaica Gas Light Co. v. Nixon* (110 Misc. Rep. 502): "These three companies, together with the Newtown Company, constitute a part of the distributing system of a great parent company, the Brooklyn Union Gas Company. And it is a parent company in the truest sense of the word. It maintains the most absolute control and ownership over them. The four companies are more than subsidiaries as that word is ordinarily used. They are the very limbs of the Brooklyn Union Gas Company. There is an absolute and inextricable identity of interests. The four small companies supply gas to the second and fourth wards but nominally. They are nothing more than paper corporations, convenient operating divisions of the Brooklyn Union Company, which owns every share of their stock and has advanced every penny invested in them. No private investors own a share of their stock or are interested in one of them. The outstanding securities of the Brooklyn Union constitute the only connecting link between the investors and these four companies. None of them manufacture a foot of gas, and all that they distribute is made at and comes from the works of the Brooklyn Union Company, which company picks from among its employees the officers of the small companies, whose salaries, together with other general expenses, are arbitrarily divided and apportioned among the Queens companies and are at the most simply bookkeeping entries."

Therefore, in considering the expense involved in the extension of this service, the Public Service Commission should take into consideration the relation existing between this Company and the Brooklyn Union Gas Company, and was not necessarily limited to a consideration of the expense with relation either to the capitalization or stated income of the relator. A public service corporation cannot minimize the duty it owes to the public by incorporating a portion of its distributing system.

The power of this court to review the action of the Public Service Commission, when it decides that an extension of the service of such company into a new locality is reasonable and necessary, is very much limited. We reversed the Public Service Commission in the case of *People ex rel. New York & Queens Gas Co. v. McCall* (171 App. Div. 580) and annulled an order made by said Commission requiring the gas company to extend its gas mains and services to Douglaston in the borough of Queens, stating: "We have no doubt [fol. 536] that under this law the question remains for the court to determine, upon the review of the determination of the Public Service Commission, whether the extension ordered was a reasonable extension."

On appeal to the Court of Appeals the order of this court was reversed (219 N. Y. 84), the opinion stating at page 87 the following:

"This statement of the law is quite likely to create a misapprehension as to the power of the court. The court has no power to substitute its own judgment of what is reasonable in place of the determination of the Public Service Commission, and it can only annul the order of the Commission for the violation of some rule of law.

"The Public Service Commissions were created by the Legislature to perform very important functions in the community, namely, to regulate the great public service corporations of the State in the conduct of their business and compel those corporations adequately to discharge their duties to the public and not to exact therefor excessive charges. It was assumed perhaps by the Legislature that the members of the Public Service Commissions would acquire special knowledge of the matters intrusted to them by experience and study, and that when the plan of their creation was fully developed they would prove efficient instrumentalities for dealing with the complex problems presented by the activities of these great corporations. It was not intended that the courts should interfere with the Commissions or review their determinations further than is necessary to keep them [fol. 537] within the law and protect the constitutional rights of the corporations over which they were given control."

The case was taken by a writ of error to the United States Supreme Court, and that court said (245 U. S. 345, 351): "We agree with the Court of Appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capricious, but was based on very substantial evidence, and therefore that, even if the courts differed with the Commission as to the expediency or wisdom of the order, they are without authority to substitute for its judgment their views as to what may be reasonable or wise."

Therefore, in reviewing the findings of fact of the Commission, we can only set aside an order when there is such a preponderance of proof against the existence of the facts found that the verdict of the jury affirming the existence thereof would be set aside by the court as against the weight of evidence. (*People ex rel. New York Edison Co. v. Willecox*, 151 App. Div. 832, 842.)

The Commissioner found that the company in 1916 had through representatives promised to make the necessary installation and extend the services to Springfield, and that many of the houses in the localities that would be served by such extension were piped for gas. He also found that the communities to be served were growing rapidly, and that the character of the houses being erected gave evidence that the occupants would become customers of the gas company. In fact, it appeared that some of the pipe was bought by the gas company for the purpose of making this extension in 1916 and was stored, and the delay from 1916 to 1920 was occasioned by the increase in cost arising out of the World War.

[fol. 538] There was sufficient evidence to sustain that finding of fact. Of course, the extension of these mains will be a subject of expense to the company, a return upon the investment of which may be secured in a short time by the increased number of customers that will result from the extension of the facilities for the use of gas for light and heat. But the expense to the company is not the only mat-

ter for consideration. The company holds a valuable, exclusive franchise to supply gas in this territory. There was imposed upon it the corresponding duty to serve the public. As was said by the Court of Appeals in *People ex rel. New York & Queens Gas Co. v. McCall* (supra): "The occupants of these houses can get no gas unless they are supplied by the relator. It is the duty of the relator to supply their needs if practicable." The United States Supreme Court, in affirming the decision of the Court of Appeals, said: "Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render."

I, therefore, recommend that the writ be dismissed, with fifty dollars costs and disbursements, and the order of the Public Service Commission affirmed.

Clarke, P. J., Dowling, Greenbaum and Finch, J. J. concur.

Writ dismissed and proceedings confirmed, with fifty dollars costs and disbursements.

[fol. 539] IN SUPREME COURT, NEW YORK COUNTY

[Title omitted]

NOTICE OF APPEAL TO THE COURT OF APPEALS OF THE STATE OF
NEW YORK

SIRS: Please take notice that the relator herein hereby appeals to the Court of Appeals of the State of New York from the order of the Appellate Division, held in and for the First Judicial Department, in the County of New York, on the 17th day of November, 1922, entered and filed therein on the said date; certified copy of said order having been duly entered and filed in the office of the Clerk of the County of New York on the 22d day of November, 1922; dismissing the writ of certiorari sued out by the relator herein and confirming the proceedings of the respondent; and the said relator appeals from each and every part of said order as well as from the whole thereof, and intends to bring up for review the questions and matters directly involving the construction of the Constitution of the United States and of the State of New York which were raised below and are involved in said appeal.

Dated November 25, 1922.

[fol. 540] Yours, etc., Cullen & Dykman, Attorneys for Relator-Appellant.

Office & P. O. Address, 177 Montague Street, Brooklyn, N. Y.

To Hon. Ledyard P. Hale, Counsel Public Service Commission of the State of New York, 30 Church Street, New York City; County Clerk New York City; Clerk Supreme Court, Appellate Division, First Department.

[fol. 541] IN COURT OF APPEALS OF NEW YORK

THE PEOPLE, &c., ex Rel. THE WOODHAVEN GAS LIGHT COMPANY,
Appellant,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Respondent

REMITTITUR FROM COURT OF APPEALS—May 9, 1923

Be it remembered that on the 3rd day of April, 1923, The Woodhaven Gas Light Company, the appellant in this case, came here unto the Court of Appeals by Cullen & Dykman, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department and The Public Service Commission of the State of New York, the Respondent in said cause afterwards appeared in said Court of Appeals by Ledyard P. Hale, its attorney, which said Notice of Appeal and the return thereto filed as aforesaid are hereunto annexed.

Whereupon the said Court of Appeals having heard this cause argued by Mr. William N. Dykman of counsel for the Appellant—and by Mr. Edward M. Deegan of counsel for the respondent, and after [fol. 542] due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said Supreme Court there to be proceeded upon according to law.

Therefore it is considered that the said order be affirmed with costs as aforesaid and hereupon as well the notice of Appeal and return thereto aforesaid by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, to the form of the statute in such case made and provided, to be enforced according to law and which record now remains in the said Supreme Court before the Justices thereof.

R. M. Barber, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office

Albany, May 9, 1923.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals with the papers originally filed therein attached thereto.

R. M. Barber, Clerk. [Seal.]

[fol. 543]

IN SUPREME COURT OF NEW YORK

[Title omitted]

ORDER ON REMITTITUR—May 15, 1923

The above named relator having appealed to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court for the First Judicial Department entered and filed herein in the office of the Clerk of the said Appellate Division on the 17th day of November, 1922, and a certified copy thereof duly entered and filed in the office of the Clerk of the County of New York on the twenty-second day of November, 1922, which order dismissed a writ of certiorari and confirmed in all things the proceedings of the respondent; and said appeal having been duly argued at the Court of Appeals, and after due deliberation, the Court of Appeals having adjudged that the said order so appealed from as aforesaid be affirmed with costs, and having further ordered that the proceedings therein be remitted to the Supreme Court and there to be proceeded upon according to law;

[fol. 544] Now on reading and filing its remittitur from the Court of Appeals herein, and upon motion of Ledyard P. Hale, attorney for the respondent, it is

Ordered that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court.

Enter.

I. L. J. S. C.

[fol. 545]

IN SUPREME COURT NEW YORK COUNTY

[Title omitted]

JUDGMENT ON REMITTITUR

An order having been entered and filed herein in the office of the Clerk of the Appellate Division for the First Judicial Department on the 17th day of November, 1922, a certified copy whereof was filed in the office of the Clerk of the County of New York on the 22nd day of November, 1922, which order dismissed the writ of certiorari and confirmed in all things the proceedings of the respondent, and the relator having appealed from said order to the Court of Appeals, and the Court of Appeals having sent hither its remittitur filed herein on the 15th day of May, 1923, by which it appears that the said Court of Appeals has adjudged that the said order so appealed from should be affirmed and the determination of the respondent herein confirmed with costs and has remitted the judgment of said Court of Appeals to this Court to be enforced according to law, and this Court by an order duly entered herein on the 15th day of May, 1923, having ordered and adjudged that said order and judgment be made the order and judgment of this court, and the cost and disburse-

ments of the above named relator having been duly taxed at the sum of One hundred eighty-three dollars and 89/100 dollars (\$183.89.)

Now on motion of Ledyard P. Hale, attorney for the respondent, [fol. 546] it is

Ordered and adjudged that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court, and that the above named respondent, The Public Service Commission of the State of New York, recover of the relator, The Woodhaven Gas Light Company, the sum of One Hundred and eighty-three and 89/100 dollars (\$183.89).

Dated May 19, 1923.

James A. Donegan, Clerk.

[fol. 547]

IN THE COURT OF APPEALS

[Title omitted]

PETITION FOR WRIT OF ERROR

Petition for writ of error requiring the Supreme Court of the State of New York to certify to the Supreme Court of the United States for its review and determination in the case of The People of the State of New York on the relation of The Woodhaven Gas Light Company, relator, against The Public Service Commission of the State of New York.

To the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York:

The petition of The Woodhaven Gas Light Company respectfully shows:

1. That on or about the 8th day of May, 1923 the Court of Appeals of the State of New York made and entered a final order and judgment in the above entitled cause in favor of the respondent [fol. 548] herein and against your petitioner, in which final order and judgment and in the proceedings had in this cause, certain errors were committed to the prejudice of your petitioner, all of which appear more fully herein below and in the assignment of errors filed in this cause with this petition. That the said Court of Appeals is the highest court of the State of New York in which a decision in this suit or proceeding and matter could be had.

2. On or about the 20th day of June, 1919 the Public Service Commission for the First District adopted a resolution giving notice of a hearing upon its own motion to inquire and determine whether an order should be made directing petitioner to extend its gas mains, services and other apparatus to such extent as may be necessary to reasonably furnish gas to residents of Springfield, Laurelton, Rosedale, Rosedale Terrace, St. Albans, Locust Manor, Locust Lawn, South Jamaica Place, Idlewild Park, Sheffield Manor, Springfield

Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bayview Landing; and pursuant to such notice hearings were held at which evidence was adduced by said Commission and others in support of such proposed extension of gas mains and evidence was adduced by petitioner in opposition thereto.

3. On or about the 20th day of April, 1920 said Commission made its order whereby it was directed that petitioner extend its gas mains and services in such manner as may be required reasonably to serve with gas the residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and [fol. 549] Laurelton in the Fourth Ward of the Borough of Queens, City of New York, and that the construction of said extension be completed and said extension be put in service on or before November 1, 1920. The said order further provided that it was without prejudice to any further or other proceeding or proceedings and order or orders in respect to the extension of the mains and services of petitioner to the communities known as Rosedale, Rosedale Terrace, St. Albans, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bayview Landing. The order further required that petitioner notify the Commission within ten days after service thereof whether the terms of the order were accepted and would be obeyed.

4. On or about the 29th day of April, 1920, petitioner, feeling aggrieved by the order of the Commission and in pursuance of the Public Service Commission's Law of the State of New York petitioned for a rehearing alleging among other things that the order was not authorized by the Public Service Commission's Law or any other law, that it was in violation of the Federal and State Constitutions and contrary to the rule laid down by the Supreme Court of the United States in *New York and Queens Gas Co v. McCall*, 245 U. S. 345. Petitioner further alleged that the Commission either failed to consider or disregarded the operating revenue and expenditures of petitioner and that petitioner had no funds to comply with order and upon information and belief was unable to borrow any. In said petition the Commission was notified that the order was not accepted and could not be obeyed and requested a rehearing which was denied by the Commission by an order dated the 4th day of May 1920.

[fol. 550] 5. On July 16, 1920 a writ of certiorari was, upon the application of petitioner, which application was based upon constitutional grounds, duly issued out of the Supreme Court of the State of New York to Lewis Nixon constituting the Public Service Commission of the State of New York for the First District, commanding the latter to certify and return his proceedings to the Supreme Court of the State of New York to the end that his determination might be reviewed and if found illegal or erroneous that it might be revised and corrected on the merits and that the Supreme Court might cause to be done what of right ought to be done. The order allowing the writ of certiorari restrained the enforcement of the

order of the Commission until the hearing, decision and final disposition of the writ of certiorari.

6. The said order allowing writ of certiorari, and the writ of certiorari were duly served and return was made by Alfred M. Barrett as successor to Lewis Nixon constituting the Public Service Commission of the State of New York for the First District. By an order duly made and entered the 14th day of September, 1921, the Public Service Commission of the State of New York was substituted as party respondent herein in the place and stead of the said respondent Lewis Nixon. The matter came on for argument in the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department, at which time the constitutional questions involved and hereinafter stated were insisted upon and considered. On or about the 17th day of November, 1922 the aforesaid Appellate Division confirmed the proceedings of the Public Service Commission.

[fol. 551] 7. Petitioner on November 25, 1922, appealed to the Court of Appeals of the State of New York from the aforesaid order of the said Appellate Division and in the notice of appeal stated that the questions and matters involving the State and Federal Constitutions would be brought up for review. Thereupon hearing was had in the aforesaid Court of Appeals and petitioner there, as it had been urged in the Court below and before the Commission, maintained that the order of the Commission confiscated the property of petitioner and was otherwise void and illegal because in contravention of the State and Federal Constitutions.

8. On or about the 8th day of May, 1923, the Court of Appeals ordered and adjudged that the order of the Appellate Division of the Supreme Court of the State of New York appealed from be and the same thereby was affirmed. And it was further ordered that the record aforesaid and the proceedings be remitted into the Supreme Court of the State of New York there to be proceeded upon according to law. Thereupon the record and proceedings were duly remitted to the said Supreme Court and on the 15th day of May, 1923, at a Special Term of the Supreme Court of the State of New York held in and for the County of New York at the Court House in the Borough of Manhattan, City of New York the said judgment and order of the Court of Appeals was made the judgment and order of said Supreme Court of the State of New York, and the order and determination of the said Commission was thereby confirmed. Said record is now with said Supreme Court of the State of New York.

[fol. 552] 9. Your petitioner contends and alleges that the said order of the Commission was illegal and void because it is violative of the Constitution of the United States in that it deprives petitioner of its property without due process of law and denies petitioner the equal protection of the laws. That the cost of the extension of mains, services and other apparatus as ordered by the Commission is \$341,646 according to petitioner and \$170,548 according to the Commis-

sion. That, assuming the lower cost, \$170,548, plus the present total investment of petitioner based upon a low valuation made by the Commission of \$757,703 the proof was that upon such an investment the income in 1918 of 5.01% from the total business of petitioner in the old territory would by the extension ordered by the Commission be reduced to 4.2% and in 1919 the income of \$1,800 (already below the minimum guaranteed by the Constitution) would be further reduced and made grossly confiscatory.

10. That your petitioner states that this is a case provided for by Section 237 of the Judicial Code of the United States in which is involved a final judgment or decree in a suit in the highest court of the State in which a decision in the suit could be had, where is drawn in question the validity of an order of the Public Service Commission of the State of New York, an authority exercised under the State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of the validity of the order and such authority.

Wherefore, inasmuch as certain errors appear in the order and judgment entered upon the remittitur of the Court of Appeals and in [fol. 553] the proceedings had prior thereto, as recited in the annexed assignment of errors and in the petition herein, your petitioner prays for the allowance of a writ of error directed to the Supreme Court of the State of New York, returnable to the Supreme Court of the United States, for the correction of the errors so complained of, and to the end that said case may be reviewed and determined by said Court and that the authority exercised under the Public Service Commission law of the State of New York, Chapter 48 of the Consolidated Laws, and the issuance of the aforesaid order by the Commission directing the extension of gas mains, services and other apparatus to the communities aforesaid may be declared unconstitutional, illegal and void and that the judgment and order affirming the order of the Public Service Commission may be reversed and that your petitioner have such further relief as to the said Honorable Court may seem just; and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States and that a citation be issued as required by law.

And so your petitioner will ever pray.

The Woodhaven Gas Company, by Henry E. McGowan,
Secy. (Seal.) Cullen & Dykman, Attorneys for Petitioner.

[Title omitted]

ASSIGNMENT OF ERRORS

Remitted to the Supreme Court of the State of New York, County of New York

And now comes the relator herein and respectfully submits that in the record, proceedings, decision and final judgment and order of the Court of Appeals, duly remitted to the Supreme Court of the State of New York, County of New York and made the judgment and order of said Supreme Court of the State of New York, in the above entitled matter, there is manifest error in this, to wit:

First. The Court erred in rendering its final order and judgment in favor of respondent and against the relator.

Second. The Court erred in holding that the order of the Public Service Commission directing the extension of gas mains, services and other apparatus to the five communities of Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton was not in contravention to the Fourteenth Article in addition to and amend-[fol. 555] ment to the Constitution of the United States of America in that it deprived relator of its property without due process of law and denied relator the equal protection of the law.

Third. The Court erred in failing to hold that the extension if made would be at a great financial loss to petitioner and would render its business as a whole unprofitable and reduce the return on the investment far below that guaranteed by the Constitution.

Fourth. The Court erred in holding that in considering the expense of the extension there should be taken into consideration the relation existing between relator and the Brooklyn Union Gas Company and further erred in not limiting the consideration of the expense to the business and revenue of the relator.

Fifth. The Court erred in failing to provide for an adequate judicial hearing as to the claim of confiscation made by relator and further erred in failing to make a determination upon its own independent judgment as to both law and fact upon such claim of confiscation.

Sixth. The Court erred in failing to hold that relator was entitled to a fair and reasonable return upon the fair value of its existing property plus the fair and reasonable cost of the extension and where that return is below that guaranteed by the Constitution of the United States of America and the Articles in addition to and amendment thereof the order directing the extension is unconstitutional, illegal and void.

[fol. 556] Seventh. The Court erred in holding that the extension ordered by the Public Service Commission was a "reasonable extension" which the said Commission was authorized to direct under subdivision 2, Section 46 of The Public Service Commission Law of the State of New York and the Constitution of the United States.

Eighth. The Court erred in not holding that the order of the Public Service Commission was an unlawful and arbitrary exercise of power.

Ninth. The Court erred in not reversing the order of The Public Service Commission of the State of New York directing the aforesaid extension of its service.

Wherefore the relator prays that the judgment, order and decision aforesaid may be reversed, annulled and altogether held for nought; that the order of The Public Service Commission aforesaid directing the extension of its mains, services and other apparatus to the aforementioned communities be declared unconstitutional, and further that the relator have such other and further relief as may be proper and just.

Dated May 26, 1923.

Cullen & Dykman, Attorneys for Relator.

Office & P. O. Address, 177 Montague Street, Borough of Brooklyn, City of New York.

[fol. 557]

IN COURT OF APPEALS

[Title omitted]

ORDER ALLOWING WRIT OF ERROR

The above entitled matter coming on upon the petition of the relator-appellant this 1st day of June, 1923, against The Public Service Commission of the State of New York, respondent, for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of New York, to which Court the judgment and order of the Court of Appeals of the State of New York was duly remitted, according to the form of the statute in such case made and provided, and made the judgment and order of said Supreme Court of the State of New York on the 15th day of May, 1923; and upon examination of said petition and the record in said matter, and desiring to give The People of the State of New York on the relation of The Woodhaven Gas Light Company an opportunity to present to the Supreme Court of the United States the questions presented by the record in said matter; it is

Ordered that a writ of error be and is hereby allowed to be sent from the Supreme Court of the United States to the Supreme Court

[fol. 558] of the State of New York, to which Court the judgment and order of this Court was remitted according to law; upon the relator-appellant giving a bond in the sum of one thousand dollars, which shall act as a supersedeas.

Dated June 1, 1923.

Frank A. Hiscock, Chief Judge of the Court of Appeals.

[fol. 559]

IN COURT OF APPEALS

WRIT OF ERROR

UNITED STATES OF AMERICA:

The President of the United States to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court of the State of New York, on a remittitur from the Court of Appeals of the State of New York, being the highest court of law or equity of the said State in which decision could be had in the said suit between The People of the State of New York on the relation of The Woodhaven Gas Light Company, relator, and The Public Service Commission of the State of New York, respondent, now before you or some of you, which judgment was on the 19th day of May, 1923, entered in the office of the Clerk of the Supreme Court of the State of New York in the City and County of New York, State of New York, wherein was drawn in question the validity of an authority exercised under the State of New York, on the ground of its being repugnant to the Constitution of the United States, particularly the Fourteenth Amendment thereof, and the decision was in favor of its validity and against the title, right, privilege or exemption especially set up or claimed under such amendment to the said Constitution; it is alleged that error hath happened to the great damage of the said The Woodhaven Gas Light Company, as by its petition appears.

We being willing that error, if any hath been, should be duly [fol. 560] corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this 5th day of June, in the year of our Lord One thousand nine hundred and twenty-three.

Alex Gilchrist, Jr., Clerk of the United States District Court,
Southern District of New York. (Seal.)

The above writ is allowed by Frank H. Hiscock, Chief Judge of the New York Court of Appeals.

[fol. 561] CITATION—In usual form showing service on Ledgard P. Hale; omitted in printing

[fols. 562 & 563] BOND ON WRIT OF ERROR FOR \$1,000—Approved and filed June 1, 1923; omitted in printing

[fols. 564 & 565] IN COURT OF APPEALS

AFFIDAVIT OF HENRY E. MCGOWAN

STATE OF NEW YORK,
County of Kings, ss:

Henry E. McGowan, being duly sworn, says: That he is the Secretary of The Woodhaven Gas Light Company, the petitioner herein named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is not made by the petitioner in person is that it is a corporation; that deponent is the Secretary thereof, and that deponent makes the same from his personal knowledge and supervision of the affairs and business of said corporation.

Henry E. McGowan.

Sworn to before me this 26th day of May, 1923. Norman L. Smith, Notary Public Kings Co. (Seal.)

[Title omitted]

PRECIPUE FOR TRANSCRIPT OF RECORD

To the Clerk of the Supreme Court of the State of New York, County of New York:

You are requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to a writ of error allowed in the above mentioned cause and to include in such transcript of record the following and no other papers, to-wit:

1. Petition for writ of certiorari.
2. Order for writ of certiorari.
3. Writ of certiorari.

4. Return to writ including testimony and exhibits annexed thereto, omitting therefrom the testimony of Jay H. Boyce, Matthew R. Seaman, from folio 450 to folio 457, Raymond O'Connor, John J. McLean, that portion of the testimony of Victor M. Berthold from folio 464 to folio 465, Joseph L. Phillips, Mrs. O. H. Stevens, Mrs. L. W. Peister, Mrs. Arthur Howard, Mrs. Charles Berry, that portion of the testimony of Charles H. Winslow from folio 497 to folio 498 and Charles W. Steinhoff, and substituting therefor immediately after the testimony of Mrs. Anna M. Smith at folio 353, the following statement:

"The following witnesses were then sworn, each of whom testified that he or she had obtained signatures on cards similar in all respects to those obtained by the preceding witness in the number set opposite the name of each:

Jay H. Boyce.....	105
Matthew R. Seaman.....	45
Raymond O'Connor	172
John J. McLean	20
Victor M. Berthold	34
Joseph L. Phillips	91
Mrs. O. H. Stevens	15
Mrs. L. W. Peister	7
Mrs. Arthur Howard.....	30
Mrs. Charles Berry.....	19
Charles H. Winslow.....	106
Charles W. Steinhoff.....	29

which cards were received in evidence following objection and exception of the plaintiff in error and constituting a portion of Commission's Exhibit No. 5."

5. Order of Appellate Division of the Supreme Court of the State of New York First Department confirming determination of the Public Service Commission.

6. Opinion of Appellate Division.
7. Notice of Appeal to Court of Appeals of the State of New York.
8. Remittitur from Court of Appeals.
9. Order on remittitur of Supreme Court of the State of New York, County of New York.
10. Judgment on remittitur.
11. Petition for writ of error.
12. Assignment of Errors.
13. Order allowing writ of error.
14. Writ of error.
15. Citation with endorsement bearing admission of service.
16. Bond on writ of error.

[fol. 568] 17. Approval of bond by the following endorsement:
 "Bond approved this 1st day of June, 1923. Frank H. Hiscock,
 Chief Judge Court of Appeals."

18. Clerk's Certificates.

19. Praecipe for record.

Dated August —, 1923.

Respectfully, Cullen and Dykman, Attorneys for Relator-
 Plaintiff in Error.

Office & P. O. Address: 177 Montague Street, Brooklyn, New
 York.

I hereby consent that the papers recited in the foregoing praecipe
 which was served on me and which papers were duly filed on the 15th
 day of June, 1923, are the papers to be returned to the Supreme
 Court of the United States herein.

Dated August —, 1923.

Charles J. Blakeslee, D., Counsel for the Public Service Com-
 mission, Respondent-Defendant in Error.

[fol. 569] IN SUPREME COURT OF NEW YORK

CLERK'S CERTIFICATE

I, James A. Donegan, Clerk of the County of New York and Clerk
 of the Supreme Court, County of New York, do hereby certify the
 above and foregoing to be a true and complete transcript of the pro-
 ceedings had of record prepared and made by me in accordance with
 the praecipe filed in the case entitled The People of the State of New

York on relation of The Woodhaven Gas Light Company, relator, plaintiff in error, against the Public Service Commission of the State of New York, respondent-defendant in error, and of the writ of error as the same appears from the original records and files thereof now remaining in my custody and control.

In witness whereof I have hereunto set my hand and affixed the seal of this Court in my office in the Borough of Manhattan, in the City, County and State of New York, this 25 day of Jan. 1924.

James A. Donegan, Clerk. (Seal of the State of New York.)

STATE OF NEW YORK,

County of New York, ss:

I, James A. Donegan, Clerk of the County of New York and Clerk of the Supreme Court, of the State of New York in and for said County, said Court being a Court of Records, do hereby certify that I have compared the annexed with the original records as filed in my office, and with the writ of error, and that the same is a true [fol. 570] transcript thereof and of the whole of the original.

In testimony whereof I have hereunto set my hand and affixed the seal of said County and Court, this 25 day of Jan., 1924.

James A. Donegan, Clerk. (Seal of the State of New York.)

Endorsed on cover: File No. 30,110. New York Supreme Court. Term No. 282. The People of the State of New York on the relation of The Woodhaven Gas Light Company, plaintiff in error, vs. The Public Service Commission of the State of New York. Filed February 8, 1924. File No. 30,110.

Office Supreme Court, N. Y.
FILED

OCT 26 1925

WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

October Term, 1925
No. 33

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of THE WOODHAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

against

THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Defendant-in-Error.

**AFFIDAVITS IN ANSWER TO MOTION TO DISMISS
AND BRIEF ON BEHALF OF PLAINTIFF-IN-ERROR.**

CULLEN & DYKMAN,
Attorneys for Plaintiff-in-Error,
177 Montague Street,
Brooklyn, New York.

WILLIAM N. DYKMAN,
JACKSON A. DYKMAN,
Of Counsel.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

Come now the People of the State of New York on the relation of The Woodhaven Gas Light Company, plaintiff-in-error herein, and answering the motion of the defendant-in-error to dismiss the writ of error issued herein on June 5, 1923, deny there is no real or substantial controversy between the parties or the case has become moot and allege there is an issue on the merits which this Court can properly decide and render an effectual judgment.

The facts stated above are shown by the respective affidavits of James H. Jourdan, Arthur F. Staniford, Clifford H. Paige, John T. White, William N. Dykman

and Jackson A. Dykman hereto attached and made a part hereof.

WHEREFORE plaintiff-in-error respectfully prays this Honorable Court that the motion of the defendant-in-error to dismiss the writ of error be denied.

Dated, Brooklyn, New York, October 23, 1925.

CULLEN & DYKMAN,
Attorneys for Plaintiff-in-Error,
177 Montague Street,
Brooklyn, New York.

WILLIAM N. DYKMAN,
JACKSON A. DYKMAN,
Of Counsel.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK }
COUNTY OF KINGS } ss. :

JAMES H. JOURDAN, being duly sworn, says: I have read the affidavits on behalf of defendant-in-error. It is true, as Mr. Prendergast states, that he invited me to call on him and that he stated to me that property owners residing in the territory lying south and east of the Company's then existing mains had visited the Commission with a view of getting gas service in that territory. It is true that the Chairman and I discussed the subject and that I stated The Woodhaven Gas Light Company would extend mains into the territory known as St. Albans. I never stated to Mr. Prendergast or to anyone else that the mains would be extended to Springfield and

Laurelton or the other territories named in the Commission's order. I said to Mr. Prendergast that when these territories were more thickly populated and when the financial condition of the Company permitted extensions would be made.

I remember an interview with Mr. Deegan, of counsel for the Public Service Commission, in February 1925, at which interview Mr. Arthur F. Staniford, Vice-President of The Woodhaven Gas Light Company was present. We had before us a map showing the localities named in the order of the Commission of April 20, 1920.

Mr. Deegan asked what progress we were making in the laying of mains. A map was produced showing work that had been done up to that time. I called to Mr. Deegan's attention the mains then laid and said that we would continue to lay mains as the business and financial condition of the Company justified. We talked for an hour about the financial condition of the Company and the general situation and I tried to make it clear that we would not lay mains all over that map. I showed Mr. Deegan that the map spoke for itself, that we were laying mains, that we had gone through the St. Albans section, the section which I had agreed with Mr. Prendergast to serve. I did not say and Mr. Staniford did not say "that it was the plan of the Company to continue to build and proceed diligently to extend into Springfield".

In answer to a question of Mr. Deegan I told him to tell those outside the Commission who might inquire that the Company would extend the mains when the business and the financial condition of the Company warranted.

During the conversation with Mr. Deegan, I stated to him that he must remember the matter was still in litigation. Mr. Deegan then asked: "What can I say to the

Commission or to Mr. Prendergast?" and I replied that in spite of the litigation we had laid some mains and would lay others but were not going into a general extension until the business and financial condition warranted.

At the time of the interviews with Messrs. Prendergast and Deegan it was known to the Commission the price of gas to consumers of the plaintiff-in-error was not adequate to cover the cost of the service.

In an action now pending in the United States District Court for the Eastern District of New York against the Public Service Commission and the Attorney General to restrain the enforcement of Chapter 899 of the Laws of 1923 the Company has an interlocutory injunction restraining the enforcement of a dollar rate. The excess amount collected since the entry of the interlocutory injunction is \$284,681.94. The plaintiff-in-error has a bonded debt of \$320,000 and a floating debt of \$1,837,438.47.

JAMES H. JOURDAN

Sworn to before me this }
23rd day of October, 1925. }

JOHN MONAGHAN

Notary Public, Westchester County
Kings Co. Clerk's No. 45, Register's No. 7249
Commission expires March 30, 1927

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

CLIFFORD E. PAIGE, being duly sworn, says: In September last, Mr. Merrifield, gas engineer of the Commission, called me on the telephone to ask for a conference with the Chairman of the Commission concerning the sale of gas to the New York & Queens Gas Company for distribution in their territory in the Third Ward of the Borough of Queens. This had nothing to do with the extension or order here under review or with the Woodhaven Gas Light Company. Later, Mr. Merrifield called me again and asked me if I had seen Mr. Waldron's letter to Mr. Merrifield. I said I had. He asked me, "What about it?" and I answered: "I think that shows evidence of a

sincere effort to get this construction going". He said, "What has been done is all right but we are concerned with what we want done", and I answered: "If you have any particular places which you want especially done if you will let me know what they are we will do the best we can to meet your wishes". I never heard from him again.

C. E. PAIGE

Sworn to before me this }
23rd day of October, 1925. }

JOHN MONAGHAN

Notary Public, Westchester County
Kings Co. Clerk's No. 45, Register's No. 7249
Commission expires March 30, 1927

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

ARTHUR F. STANIFORD, being duly sworn, says: I am Vice-President of The Woodhaven Gas Light Company. I have read the affidavit of James H. Jourdan herein. The statements therein made concerning the interview between Mr. Deegan, Mr. Jourdan and me are true.

A. F. STANIFORD

Sworn to before me this }
23rd day of October, 1925. }

JOHN MONAGHAN

Notary Public, Westchester County
Kings Co. Clerk's No. 45, Register's No. 7249
Commission expires March 30, 1927

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

JOHN T. WHITE, being duly sworn, says: I am Engineer of Distribution of the plaintiff-in-error and am the witness of that name whose testimony is contained in the record.

Commencing June 28, 1924 this Company has laid in two of the localities named in the order .91 miles of 6 inch main and 1.01 miles of 12 inch main in Locust Lawn and .09 miles of 2 inch main, 3.72 miles of 6 inch main and 1.2 miles of 12 inch main in Locust Manor.

It is true, as stated in the affidavit of William Merri-field herein (p. 22), that

“in the construction of a comprehensive gas main installation, it is imperative that provision

be made for what is known in the industry as 'gas circulation'."

It having been determined to extend mains to St. Albans and St. Albans Heights and Locust Manor and Locust Lawn, it was necessary in order to obtain "gas circulation" and volume to connect these localities by the 12 inch main on Farmers Avenue.

Mr. Merrifield further states (p. 23) that in his opinion it is now practicable for the 12 inch transmission main on Farmers Avenue to supply gas in the locality designated "Springfield" or to extend distribution mains from "Jamson Avenue" into the locality immediately north and adjacent to Springfield so as to serve Springfield and Laurelton and also practicable to serve South Jamaica Place from the same main on Farmers Avenue or from the end of the transmission main located on Locust Avenue.

9.15 miles of 12 inch transmission main have been laid in the whole territory shown on the map annexed to the moving papers herein commencing at Platt Street and New York Avenue, running south to Locust Avenue, west to Rockaway Turnpike, south to Farmers Avenue and thence north to the northernmost point shown upon the map with a 12 inch installation east and west on Central Avenue. This belt-line is dependent upon governors located at some distance from its extremities as shown in red on the map, which governors also supply other territories remote from and not shown upon the map. It is stated in the moving papers that thirty (30) miles of main have been laid throughout the territory shown on the map, irrespective of the localities named

in the order, and that fifty (50) miles are required to serve the remaining territory. It is manifestly impossible to support 71.85 miles of main, or the difference between 80 and 9.15 miles, with 9.15 miles of 12 inch transmission main. Consequently, it would be necessary, in order to serve the entire territory mentioned in the order, to lay a considerable additional quantity of transmission main.

In my opinion therefore from my knowledge of actual conditions it is not practicable to supply gas from the 12 inch transmission main on Farmers Avenue into the locality designated Springfield on the map in quantities sufficient to adequately serve that territory. The "Jamson Avenue" mentioned by Mr. Merrifield is in reality Williamson Avenue, in which street there is a distribution main leading off from the 12 inch transmission main on Farmers Avenue at the intersection of Farmers Avenue and Main Street. An extension from this distribution main is in my opinion for the same reasons impracticable. It is likewise in my opinion not practicable to serve South Jamaica Place from the 12 inch main on Farmers Avenue or from the end of the transmission main on Locust Avenue in quantities sufficient to give adequate service to these localities.

In my opinion after a careful study of the whole situation the localities designated as Springfield and Laurelton cannot be properly served without the installation of at least one large transmission main in addition to that now installed.

JOHN T. WHITE

Sworn to before me this }
23rd day of October, 1925. }

JOHN MONAGHAN

Notary Public, Westchester County
Kings Co. Clerk's No. 45, Register's No. 7249
Commission expires March 30, 1927

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

WILLIAM N. DYKMAN, being duly sworn, says: I am one of the attorneys for plaintiff-in-error. It is stated or at least intimated in the affidavits of Messrs. Prendergast and Deegan that in January 1925 I requested a continuance of this cause because of doubt it would be argued. That is not true. On January 26, 1925, I received a telegram from the Clerk of this Court as follows:

“Woodhaven case against Public Service Commission may be on Thursday or Friday next Is it to be argued”

I spoke over the telephone with Mr. Stansbury or one of his assistants and stated that we had not received

the printed record and, as far as my firm knew, the record had not been printed. I asked Mr. Deegan or one of his associates by telephone if the record had been received in his office and was told it had not. On January 27th, I received a second telegram from Mr. Stansbury, as follows:

“Impossible to secure printed record Woodhaven case until Friday Better secure stipulation to continue case if possible”

I spoke over the telephone to Mr. Deegan, told him of the telegram and of the situation, prepared a stipulation and had it signed by my firm and sent the stipulation to Mr. Deegan with a letter part of which he has quoted, the whole of which is as follows:

“My dear Mr. Deegan: I enclose telegram from the Clerk of the Supreme Court of the United States and stipulation for a continuance which if you will sign I will forward to the Clerk. I am not sure that we shall want to argue the case but must defer decision on that point until consultation with the Gas Company.”

The last sentence of this letter referred to a conversation with Mr. Deegan when the first or second telegram was read to him over the telephone. He stated his hope that he would not be called upon to orally argue this case in this Court.

It is stated in the affidavit of William A. Prendergast (p. 7) that “Counsel for the Gas Company requested Mr. Deegan * * * to consent to a postponement of the case until the next term of this Court” and that “such consent was granted because the Commission knew that the actual installation of the new mains was then

under way and, as the work was being done, it did not seem that any delay in arguing the case before this Court could possibly prejudice the installation of the required service". No request for a continuance was ever made by Counsel for the Gas Company but, as hereinabove shown, the information received from the Clerk of this Court was transmitted to Counsel for the Public Service Commission and the stipulation continuing the case was necessitated by the impossibility of arguing the case for lack of a printed record.

WM. N. DYKMAN

Sworn to before me this }
23rd day of October, 1925.}

JOHN MONAGHAN

Notary Public, Westchester County

Kings Co. Clerk's No. 45, Register's No. 7249

Commission expires March 30, 1927

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK }
COUNTY OF KINGS } ss. :

JACKSON A. DYKMAN, being duly sworn, says: I am an attorney and counsellor of this Court, and argued this case for the plaintiff-in-error. It is stated in the affidavit of Edward M. Deegan herein (p. 16):

“On September 25, 1925, Mr. J. A. Dykman, of counsel for the plaintiff-in-error, informed me it had been decided to proceed with the argument of this case before this Court”.

Since the decision of the Court of Appeals of the State of New York I have on numerous occasions expressed to Mr. Deegan my belief that the decisions of the Commission, Appellate Division and Court of Appeals are

erroneous and reversible and that it was the duty of the Company to proceed with the argument. In August, 1925, during a conference with Mr. Deegan upon the final decree in a rate case, I stated to him that I was then writing the brief in this case in this Court.

On or about September 25, 1925, after receipt of a letter from the Clerk of this Court stating that the case would be on the call calendar about October 7th I telephoned Mr. Deegan and informed him of the receipt of the letter lest he should not have received similar notice and solely in order that he might be advised of the nearness of the argument. I informed him at that time that I had completed my brief and said nothing which can be described as information "that it had been decided to proceed with the argument of this case before this Court".

JACKSON A. DYKMAN

Sworn to before me this }
23rd day of October, 1925. }

JOHN MONAGHAN

Notary Public, Westchester County

Kings Co. Clerk's No. 45, Register's No. 7249

Commission expires March 30, 1927

IN THE
SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1925.

No. 30.

THE PEOPLE OF THE STATE OF NEW
YORK, on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,

Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

**BRIEF ON BEHALF OF PLAINTIFF-IN-ERROR IN
OPPOSITION TO MOTION TO DISMISS
WRIT OF ERROR.**

Statement.

Defendant-in-error asserts there is no real controversy for two reasons.

First because "plaintiff-in-error has constructed transmission and distribution mains in and is now actually serving two of the communities named in the order".

Second because "plaintiff-in-error has constructed transmission and/or distribution mains in the territory adjacent to the other communities named in the order as part of a present plan to give gas service to such communities" (M. P. 3).

These are the grounds upon which the motion rests.

As to the first it is shown in the answering affidavit of John T. White that only nine-tenths of one mile of distribution main and one and one-hundredth miles of transmission main have been laid in Locust Lawn while in Locust Manor there have been laid three and eighty-one hundredths miles of distribution main and one and two-tenths miles of transmission main (p. 7).

As to the second it is shown in the answering affidavit of Mr. White that only 9.15 miles of transmission main have been laid in all from which it is proposed by defendant-in-error that a system at least 71.85 miles in extent shall be served (pp. 8, 9). As stated by Mr. White this is manifestly impossible.

Finally as to a present plan to serve all the territory it is denied in the affidavits of Mr. Jourdan (p. 2) and Mr. Staniford (p. 6).

Mr. Prendergast says (p. 6):

“Mr. Jourdan agreed that the gas company would commence the installation of the necessary mains and that such installation would be carried to Springfield and Laurelton and the other territories named in the Commission’s order, besides other communities not so named; and, that, irrespective of the litigation, the company would undertake to serve these territories.”

Mr. Prendergast is silent as to any inducement for this large undertaking.

Mr. Jourdan says (p. 2):

“I never stated to Mr. Prendergast or to anyone else that the mains would be extended to Springfield and Laurelton or the other territories named in the Commission’s order. I said to Mr.

Prendergast that when these territories were more thickly populated and when the financial condition of the Company permitted extensions would be made."

Mr. Prendergast says (p. 7):

"Accordingly, when during the latter part of January, 1925 counsel for the Gas Company requested Mr. Deegan, who had been in immediate charge of the litigation for the Commission, to consent to a postponement of the case until the next term of this Court, such consent was given because the Commission knew that the actual installation of the new mains was then under way and, as the work was being done, it did not seem that any delay in arguing the case before this Court could possibly prejudice the installation of the required service."

Mr. Dykman says (p. 12):

"No request for a continuance was ever made by Counsel for the Gas Company but, as hereinabove shown, the information received from the Clerk of this Court was transmitted to Counsel for the Public Service Commission and the stipulation continuing the case was necessitated by the impossibility of arguing the case for lack of the printed record."

Mr. Deegan says (p. 14):

"On Tuesday, February 24, 1925, I called at the Company's office and discussed the matter with Mr. Jourdan and Mr. Arthur S. Staniford, Vice-President of the Brooklyn Union Gas Company. They showed me a map indicating the mains which had been laid and the mains proposed to be laid to serve the hitherto unserved 'Springfield' sec-

tion. In the light of our discussion, it seemed plain that the company was going with its construction program into Springfield and the nearby communities. Towards the close of the conversation, I asked whether they had any objection if I informed those outside of the Commission, who had inquired or might inquire about the matter, that it was the plan of the company to continue to build and proceed diligently to extend into Springfield. Both Mr. Jourdan and Mr. Staniford told me there was no objection, but that the company in their construction program also proposed to serve the localities along the route."

Mr. Jourdan (p. 2), corroborated by Mr. Staniford (p. 6) says:

"I called to Mr. Deegan's attention the mains then laid and said we would continue to lay mains as the business and financial condition of the Company justified. We talked for an hour about the financial condition of the Company and the general situation and I tried to make it clear that we would not lay mains all over that map. I showed Mr. Deegan that the map spoke for itself, that we were laying mains, that we had gone through the St. Albans section, the section I had agreed with Mr. Prendergast to serve. I did not say and Mr. Staniford did not say 'that it was the plan of the Company to continue to build and proceed diligently to extend into Springfield.'

"In answer to a question of Mr. Deegan I told him to tell those outside the Commission who might inquire that the Company would extend the mains when the business and the financial condition of the Company warranted."

Mr. Merrifield says (p. 21):

"I then talked with Mr. C. E. Paige, a Vice-President of The Brooklyn Union Gas Company, the substance of whose statements to me were that he would be glad to confer with Chairman Prendergast, and that he was familiar with the Springfield matter and that the outline of the work done and future program of the Company, as set forth in the letter from Mr. Waldron, was evidence of the Company's desire to meet the situation as understood by the Company and Chairman Prendergast."

Mr. Paige says (p. 4):

"Later Mr. Merrifield called me again and asked me if I had seen Mr. Waldron's letter to Mr. Merrifield. I said I had. He asked me, 'What about it?' and I answered: 'I think that shows evidence of a sincere effort to get this construction going.' He said, 'What has been done is all right but we are concerned with what we want done,' and I answered: 'If you have any particular places you want especially done if you will let me know what they are we will do the best we can to meet your wishes.' I never heard from him again."

Mr. Merrifield states (p. 23) that in his opinion "it is now practicable from an engineering standpoint" to supply Springfield and Laurelton from twelve or six inch mains now laid.

Mr. White shows (p. 9) how manifestly impossible it is to support the additional mains which Springfield and Laurelton would require from the 9.15 miles of transmission main or the distribution mains now laid.

Mr. Deegan says (p. 16):

“On September 25, 1925, Mr. J. A. Dykman, of counsel for the plaintiff-in-error, informed me that it had been decided to proceed with the argument of this case before this Court.”

Once more a message from the Clerk was being transmitted to Mr. Deegan although the inference he would have the Court draw is that it was not till September 25, 1925 that plaintiff-in-error “decided to proceed”.

Mr. Jackson A. Dykman shows (pp. 13, 14) that in August 1925 he told Mr. Deegan he was writing the brief for this Court and on September 25, 1925 merely passed on to Mr. Deegan word received from the Clerk of this Court warning of the approach of the day of argument.

POINT I.

The Case Is Not Moot.

This is a jurisdictional question depending upon whether an effectual judgment can be rendered.

There is an issue on the merits which this Court can properly decide. It is whether the plaintiff-in-error shall be compelled to extend its mains into the three remaining communities, by far the largest and the most distant of those included in the order under review.

An affirmance will not ostensibly require something to be done which has already taken place. There are no mains in three communities.

A reversal will not ostensibly avoid an event which has already passed beyond recall. There are no mains in three communities.

In each of the cases cited by defendant-in-error the facts upon which the motion to dismiss was based were undisputed. Here they are denied. We deny that the short extensions into Locust Lawn and Locust Manor are in any sense a compliance with the order. We deny the possibility of serving the adjacent communities from transmission or distribution mains now installed. We deny the existence of any present plan to serve the territory unless compelled to do so.

In order to sustain this motion the Court must find as fact, on conflicting affidavits, that there is no effectual relief to be given plaintiff-in-error. A dismissal will leave the order of the Commission in full force and effect to be enforced at the will of the Commission in a summary proceeding.

Public Service Commissions Law §74, (Appendix Brief P'lff-in-Error p. 22).

A reversal on the merits will free the plaintiff-in-error from any obligation to enter three out of five communities until conditions justify the extension.

A comparison of these possibilities demonstrates the existence of a very real controversy.

On his main brief counsel for the Commission summed up his argument for dismissal as follows:

"With respect to the three other communities it will no doubt be admitted that the gas company is going to continue its construction program for the area in question, and to proceed diligently to extend the mains so as to serve those sections within a reasonable time. So that at the present time there is no actual controversy, involving real and substantial rights." (Italics supplied, Brief p. 6.)

The absence of a controversy was based upon an expected admission of:

1. A construction program,
2. Diligently pursued and
3. Completed in a reasonable time.

On the contrary these factors are severally denied both at the argument by counsel and in the answering affidavits. No case has been found where this Court has determined on conflicting affidavits that in fact no effectual relief can be given.

POINT II.

The cases cited by defendant-in-error establish plaintiff's right to an adjudication.

Mills v. Green, 159 U. S. 651, was a bill in equity to establish plaintiff's right to vote at an election. Prior to argument in this Court the election took place. A motion to dismiss was made upon the ground "that there is now no actual controversy involving real and substantial rights between the parties to the record and *no subject matter upon which the judgment of this court can operate*". (Italics supplied.)

The facts upon which the motion was based were not disputed. Mr. Justice Gray wrote in part:

"It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him *any effectual relief whatever*, the court

will not proceed to a formal judgment, but will dismiss the appeal." (Italics supplied.)

The test laid down, possibility of granting any effectual relief whatever, applied to the present case denies the motion to dismiss.

Little v. Bowers, 134 U. S. 547, was a certiorari to review taxation. After obtaining a writ of error plaintiff paid the taxes and the costs in the case and at the time of the motion owed no money for taxes.

Again the facts upon which the motion to dismiss was based were admitted.

After citing similar cases in which the sole question was held to be whether payment had been made under duress, Mr. Justice Lamar at page 558 cited *San Mateo County v. Southern Pacific Railroad Co.*, 116 U. S. 138, in which the court rested a dismissal "upon the reason that there was no longer an existing cause of action in favor of the county against the railroad company."

In the present case there is assuredly a right of action in the Commission against the Company under Section 74 of the Public Service Commission Law, *supra*, and again the test denies this motion.

Brownlow v. Schwartz, 261 U. S. 216, was a mandamus to compel the issuance of a building permit. The petition was dismissed in the Supreme Court of the District of Columbia, but on appeal to the Court of Appeals the judgment was reversed and the cause remanded with directions to issue the writ as prayed. It was undisputed that before the issuance of a writ of error the building inspector issued the permit and the building was constructed and had been fully completed when the writ of error was allowed and all interest of the defendant in

error transferred to persons not parties to the action. Mr. Justice Sutherland wrote in part as follows:

“It is urged that the permit was issued by the inspector of buildings only because he believed it was incumbent upon him to comply with the judgment of the Court of Appeals and avoid even the appearance of disobeying it. The motive of the officer, so far as this question is concerned, is quite immaterial. We are interested only in *the indisputable fact* that his action, however induced, has left nothing to litigate. *American Book Co. v. Kansas, supra.* The case being moot further proceedings upon the merits can neither be had here nor in the court of first instance. To dismiss the writ of error would leave the judgment of the Court of Appeals requiring the issuance of the mandamus in force—at least apparently so—notwithstanding the basis therefor has disappeared. Our action must, therefore, dispose of the case, not merely of the appellate proceeding which brought it here. The practice now established by this court, under similar conditions and circumstances, is to reverse the judgment below and remand the case with directions to dismiss the bill, complaint or petition.” (Italics supplied.)

The court also writes, p. 217:

“This court will not proceed to a determination when its judgment would be wholly ineffectual for want of a subject matter on which it could operate. An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly void an event which had already passed beyond recall. One would be as vain as the other. To adjudicate a cause which no longer exists is a proceeding which this court uniformly has declined to entertain.”

To bring the present case within the rule in *Brownlow v. Schwartz* it would be necessary for the Commission to show that the extension directed by the order under review had been completed, for the *Brownlow* case seems to add nothing to the established rule of this Court, except to decide that the motive of the party in complying with the order under review is immaterial.

In *California v. San Pablo etc. Railroad*, 149 U. S. 308, pending a writ of error to reverse a judgment for the defendant in an action by a state to recover sums of money for taxes the defendant offered to the plaintiff and deposited in a bank to its credit the amount of those sums with penalties, interest and costs, which by a statute of the state have the same effect as actual payment and receipt of the money.

Mr. Justice Gray wrote:

“Any obligation of the defendant to pay to the state the sums sued for in this case, together with interest, penalties and costs, has been extinguished by the offer to pay all these sums, and the deposit of the money in bank, which by a statute of the state have the same effect as actual payment and receipt of the money. *And the state has obtained everything that it could recover in this case by a judgment of this court in its favor.*” (Italics supplied.)

Richardson v. McChesney, 218 U. S. 487, was an action against the Secretary of State of Kentucky to compel him in certifying nominees for Congress to proceed under a former apportionment act on the ground that the present act is unconstitutional.

Mr. Justice Lurton wrote in part as follows:

“The election to be affected by a decree, according to the prayer of the bill, has long since been held and the members of Congress were, in November, 1908, elected under the Apportionment Act of 1900. They were, as we may judicially know, admitted to their respective seats, and, as we may also take notice, their successors have been elected according to the same scheme of apportionment. The thing sought to be prevented has been done, and cannot be undone by any judicial action. Under such circumstances there is nothing but a moot case.”

American Book Co. v. Kansas, 193 U. S. 49, was a quo warranto by a county attorney to oust defendant from doing business in Kansas and declare void contracts with State Text Book Commission.

A preliminary injunction was granted restraining plaintiff-in-error from entering into any contract with any person in the state and from furnishing school books to its agents in the state. The Supreme Court of the state in awarding judgment said in part:

“The defendant will be ousted of its claimed rights to do business in this State until it complies with the requirements of the law, but the prayer of the petition for the annulment of the contract will be denied.”

Laws of the state require a foreign corporation to make an application to the Charter Board to do such business and file a certified copy of its charter or articles of incorporation and furnish certain information. On motion to dismiss on the ground that the judgment had been complied with the American Book Company *did not deny the compliance* but attempted to justify it on the ground

that it had only to the 15th of September "to supply the wants of the public schools in Kansas which it had contracted to deliver and under stress of this public necessity and under the sanction and penalties of its contract it felt coerced to make the payment aforesaid, (the charter fee) and otherwise to comply with the statute as interpreted by the Supreme Court in the case at bar."

A motion to dismiss was granted, the court quoting the language from *Mills v. Green, supra*, and holding that the plaintiff-in-error had not acted under coercion.

Dakota County v. Glidden, 113 U. S. 222, was a suit on county bonds issued in aid of a railroad. Judgment for plaintiff. Defendant brings writ of error. Subsequent to the judgment the county settled with the plaintiff and other bondholders by giving them new bonds bearing a less rate of interest and the old bonds which were the cause of action in this suit were surrendered and destroyed.

Mr. Justice Miller wrote in part:

"A new agreement, on sufficient consideration, was made, by which the judgment itself, the coupons on which it was recovered and the bonds of which these coupons were a part, were all surrendered and destroyed, and other bonds and other coupons were accepted in their place, payable at a more distant date and with a lower rate of interest, with the effect of extinguishing the judgment now sought to be reversed, so that the plaintiff in that judgment could not issue execution on it, though there is no supersedeas bond to secure its payment.

"It is a valid compromise and settlement of a much larger claim, but it includes this judgment necessarily. It *extinguishes* the cause of action

in this case. If valid, it is a bar to any prosecution of the suit in the circuit court, though we should reverse this judgment on the record as it stands for errors which may be found in it. To examine these errors and reverse the judgment is a fruitless proceeding, because when the plaintiff has secured his object the relation of the parties is unchanged, and must stand or fall on the terms of the compromise."

In *Gulf, Col. & S. F. Ry. v. Dennis*, 224 U. S. 503, the highest state court to which the case could be carried held a railroad company liable not only for damages claimed but also for an attorney's fee under a state statute. The railroad company sued out a writ of error having insisted in the state court that the statute violated the Federal Constitution. Before the case was reached in the Supreme Court the highest court of the state in another case adjudged the statute to be violative of a provision of the State Constitution and void. That fact being brought to the attention of this Court, it held effect must be given to the intervening decision of the highest state court and, as to dismiss the writ would leave the judgment to be enforced as rendered, the proper procedure is to vacate the judgment and remand the case so that effect may be given to the intervening decision of the highest state court.

The language quoted by Mr. Deegan occurs in answer to the thought that the court may be reviewing a non-federal question, Mr. Justice Van Devanter having written prior to the quotation by Mr. Deegan as follows:

"We think what was there said is, in principle, applicable here. For while on a writ of error to a state court our province ordinarily is only to in-

quire whether that court has erred in the decision of some Federal question, it does not follow that where, pending the writ, a statute of the State or a decision of its highest judicial tribunal intervenes and puts an end to the right which the judgment sustains, we should ignore the changed situation and affirm or reverse the judgment with sole regard to the Federal question. On the contrary, we are of opinion that in such a case it becomes our duty to recognize the changed situation, and either to apply the intervening law or decision or to set aside the judgment and remand the case so that the state court may do so. To do this is not to review, in any proper sense of the term, the decision of that court upon a non-Federal question, but only to give effect to a matter arising since its judgment and bearing directly upon the right disposition of the case."

It seems established by the foregoing cases cited by the defendant-in-error and those cited in the opinion:

1. This Court will not hold a case to be moot upon conflicting evidence, or
2. Where any effectual relief whatever can be granted the plaintiff-in-error.

These propositions are indeed correlative since to dismiss a writ of error upon conflicting affidavits must be in effect a decision upon the merits to avoid which the motion to dismiss is made.

POINT III.

Disputed Facts.

Scattered throughout the moving affidavits are found the words "The Brooklyn Union Gas Company" in a very apparent effort to give further support to the contention of the defendant-in-error in Point V of its main brief that plaintiff-in-error and The Brooklyn Union Gas Company are identical.

Mr. Jourdan is described as President of The Brooklyn Union Gas Company (pp. 6, 14, 21, 33), Mr. Waldron as its Assistant Superintendent (pp. 6, 20), Messrs. Staniford and Paige as its Vice-Presidents (pp. 14, 21) and Mr. C. C. Atwood as its Assistant Chief Engineer (p. 15).

In the brief much is made of the fact that Mr. Waldron's letter is written on a letterhead of The Brooklyn Union Gas Company and refers to "this Company", which counsel describes as "apparently The Brooklyn Union Gas Company" (p. 30), while in the latter portion of the brief (p. 33) the officers from whom assurances are alleged to have been received are each described as officers of The Brooklyn Union Gas Company.

The alleged identity between the two companies cannot affect the disposition of this motion and we therefore rest upon the contentions made in our main brief, respectfully calling to the Court's attention, that this Commission instituted the proceeding upon its own motion, introduced no evidence concerning the Brooklyn Union Gas Company and, when counsel for a citizens committee offered evidence concerning it, excluded The Brooklyn Union Gas Company from its consideration.

The affidavit of Mr. Merrifield and counsel's comments thereon seem to ask this Court upon a motion usually decided on conceded facts to pass upon questions of gas engineering as to which the respective engineers disagree and it is respectfully submitted that in order to decide this motion in favor of the defendant-in-error the Court must upon conflicting affidavits try questions of fact anew and not upon facts as contained in the record.

The order under review directed "that the construction of the said extension be completed and said extension be put into service on or before November 1, 1920" (R. 6). If there be no controversy it is because the order to extend and reasonably serve by November 1, 1920 has been superseded by a promise of an officer of the plaintiff-in-error made to the Chairman of the Public Service Commission to extend by the end of 1927, which promise the Chairman of the Public Service Commission states he accepted as a compliance with the order. Or course, the plaintiff-in-error, whether bound or not, would perform a promise, which it denies, but the plaintiff-in-error deals with a public officer at its peril and certainly no member or officer of the Public Service Commission could extend the time limited or in any manner change the existing order. That requires another order of the Commission after a meeting and a vote. *no auth*

The order under review was made April 20, 1920 (R. 5). The affidavit of Mr. Merrifield on this motion states:

"It is my opinion that while it would have been possible to complete the construction of gas mains to Springfield and Laurelton before this time,

such a program would not be practical from an engineering viewpoint inasmuch as the supply of gas would come from one source only and would undoubtedly result in an inadequate gas service to many residents of the district. This point may be better understood when it is realized that a gas system which depends upon one source of supply is one where it is most difficult to maintain adequate pressures because of the multiplicity of dead-end mains which must of necessity form a major part of the construction.

In the construction of a comprehensive gas main installation, it is imperative that provision be made for what is known in the industry as 'gas circulation.' The circulating arteries are large feeder mains which must follow a belt system, in order to have more than one source of supply. The lateral mains running from the feeders depend for their supply upon the maintenance of proper circulation in the feeder system. A single feeder main running through this territory would not meet the requirements necessary to maintain adequate gas service and because of such, it would be impractical to confine the installation of gas mains to the territory particularly referred to in the order of the Commission.

The program followed by The Woodhaven Gas Light Company squares with good engineering practice from the viewpoint of a comprehensive system of embracing territory hitherto unserved with gas. The company's program indicates a comprehensive conception of the engineering problem involved in furnishing gas service to what may be termed the Springfield area, and the installations thus far made indicate that the work is progressing with reasonable alacrity." (p. 22).

Plainly then the order was unreasonable from an engineering standpoint both in scope and time for completion and the installations thus far made so indicate since they have not been made in compliance therewith but according to engineering practice now approved in the affidavit by the Commission's chief engineer. The controversy, however, is not between the engineers nor is the question one of engineering. It is whether the Public Service Commission may compel an extension which will confiscate plaintiff's property and is a very real question of finance. The plaintiff-in-error has no money to make the extension and by reason of the fixed statutory rate and the statutory prohibition against its increase by the Commission (Public Service Commission's Law, Section 72, appendix, p. 21) the company has no credit.

In 1923 the Legislature of the State of New York passed an act (L. 1923, ch. 899) amending the Public Service Commission's Law by the addition of a new section as follows:

“§67-a. CHARGE FOR GAS IN CITIES OF ONE MILLION OR MORE. A gas corporation engaged in the business of manufacturing, furnishing or selling illuminating gas in a city containing a population of one million or over shall not charge or receive for gas furnished or sold in such city a sum per one thousand cubic feet in excess of one dollar, nor furnish in such city gas of a standard less than six hundred and fifty British thermal units per cubic foot, measured under normal conditions of temperature and atmospheric pressure. The public service commission, notwithstanding any other provision of this chapter, shall not al-

low a rate or charge in the case of such cities in excess of such sum.

§2. This act shall take effect immediately."

This statute has been attacked as confiscatory and unconstitutional by all the gas companies in the City of New York and was so held in the case of The Brooklyn Union Gas Company by final decree of the United States District Court for the Eastern District of New York entered August 3, 1925, restraining its enforcement. Plaintiff-in-error also has a suit pending to declare the statute unconstitutional and an interlocutory injunction by the terms of which 15¢ per thousand cubic feet must be returned to consumers if the law is upheld. The excess amount collected since the entry of the interlocutory injunction is \$284,681.94. The plaintiff-in-error has a bonded debt of \$320,000 and a floating debt of \$1,837,438.47. If the law of 1923 should be upheld the plaintiff-in-error could not obtain a penny of new capital and would be hopelessly in debt.

If the order under review should also be upheld and obedience is financially impossible, the plaintiff would indeed be left in peril.

Moreover, the Public Service Commission Law, Section 73 (appendix p. 22) imposes a forfeiture of \$1,000. a day for a continuing failure to obey an order of the Commission. It is believed this is unconstitutional within the decisions of this Court.

Ex parte Young, 209 U. S. 123;

Willcox v. Consolidated Gas Co., 212 U. S. 19.

The portion of this section making every-day's delay a separate offense might, however, be separated and the

remaining fine of \$1,000. stand. This is another effectual relief which reversal of this order will give the plaintiff-in-error.

CONCLUSION.

Defendant-in-error is now seeking to avoid an adjudication upon the merits, the record concededly showing confiscation, by a motion to dismiss, which if granted will leave plaintiff-in-error at the mercy of an order summarily enforceable.

The motion to dismiss should be denied.

Dated October 23, 1925.

Respectfully submitted,

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Attorneys for Plaintiff-in-Error,
177 Montague Street,
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WILLIAM N. DYKMAN,
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Of Counsel.

FILED

SEP 22 1925

NEW YORK COUNTY

CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1925

CALENDAR No. 33

THE PEOPLE OF THE STATE OF NEW YORK on the
relation of THE WOODHAVEN GAS LIGHT COMPANY,
Plaintiff in Error,

THE PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF ON BEHALF OF PLAINTIFF IN ERROR

WILLIAM A. STEWART

Attorney for Plaintiff in Error
117 Madison Street
New York, New York

WILLIAM W. STEWART
Attorney for Defendant in Error

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925.
CALENDAR No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

OFFICIAL REPORT OF OPINIONS DELIVERED IN
COURTS BELOW:

203 App. Div. 369;
236 N. Y. 530, no opinion.

JUDGMENT TO BE REVIEWED:

Dated May 19, 1923 (R., 349).

SPECIFIC CLAIMS AND RULINGS IN LOWER COURTS AS BASIS OF THIS COURT'S JURISDICTION:

I. Petition for Writ of Certiorari (R., 1), claims:

"8. That the order of the Commission is in violation of the Constitution of the United States * * * in that it deprives your petitioner of its property without due process of law and denies your petitioner the equal protection of the law" (R., 4).

Supreme Court, Special Term, "Specifically found and decided as follows":

"That if the order of the Public Service Commission of the State of New York for the First District dated April 20, 1920, be executed and the relator compelled to extend its gas mains and services in such manner as may be required reasonably to serve with gas the residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton in the Fourth Ward of the Borough of Queens, City of New York, and the construction of the said extension completed and the same put in service on or before November 1, 1920, and such order of the Public Service Commission of the State of New York for the First District take effect forthwith, great and irreparable damage will result to the relator, the nature of which is specified as follows, namely: Relator will be compelled to expend a large sum of money amounting, according to the testimony introduced by the respondent, to at least \$341,646, although the uncontradicted evidence introduced by the petitioner shows that it has no surplus fund and that it is at the present time and was during the year 1919 serving its present customers at a loss and the loss which would result from the service of consumers in the territory to which the extension has been ordered would not be absorbed therefore by the general revenue and earnings of the relator; the evidence submitted to the Court in support of this finding being identified by reference thereto as follows, namely: the petition verified June 15, 1920, and the evidence

taken before the Public Service Commission of the State of New York for the First District" (R., 10).

Writ of Certiorari (R., 11) recites that the order of the Public Service Commission if enforced:

"1. Will constitute the taking of the property of the petitioner without due process of law in violation of the Constitution of the United States and of the State of New York;

"2. Will deny the petitioner the equal protection of the law in violation of the Constitution of the United States" (R., 12).

II. The Appellate Division of the Supreme Court on the petition for the writ (R., 1), writ (R., 11) and evidence ruled against the aforesaid claim by dismissing the writ (R., 344).

III. Notice of appeal to Court of Appeals states:

"* * * said relator * * * intends to bring up for review the questions and matters directly involving the construction of the Constitution of the United States * * * which were raised below and are involved in said appeal" (R., 347).

The Court of Appeals ruled against plaintiff-in-error and affirmed the judgment (R., 348).

IV. Writ of Error:

Certifies there "was drawn in question the validity of an authority exercised under the State of New York, on the ground of its being repugnant to the Constitution of the United States, particularly the Fourteenth Amendment thereof, and the decision was in favor of its validity and against the title, right, privilege or exemption especially set up or claimed under such amendment to the said Constitution" (R., 356).

JURISDICTION OF THIS COURT IS INVOKED UNDER:

Judicial Code, § 237.

THE FOLLOWING CASES ARE BELIEVED
TO SUSTAIN THE JURISDICTION:

Murdock v. City of Memphis, 20 Wall 590.

C. B. & Q. Railway v. Drainage Commrs., 200
U. S. 561.

Gulf, Colorado &c. Ry. Co. v. McGinnis, 228
U. S. 173.

New York & Queens Gas Co. v. McCall, 245 U. S.
345.

Statement of Case.

The Woodhaven Gas Light Company operates in a part of the Fourth Ward of the Borough of Queens of the City of New York (R., 7) which is a thinly settled locality with 150 consumers per mile of main (R., 205).

The value of its property was estimated by the Commission at \$580,527 (R., 260, 261; Ex. 32) upon which, during the year when the order under review was made, it earned, according to the Commission itself, a nominal income of \$1,799.93 (Ex. 35; R., 340).

It has been ordered to make an extension costing, according to the Commission, (R., 203) at least \$271,574.71 which the undisputed evidence shows will increase its operating deficit (R., 181).

The Public Service Commission of New York, at the time it made the order herein, was empowered by statute "to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities."

Public Service Commission Law §§66, subd. 3 (L. 1910, ch. 480).

The Commission on its own motion (R., 16) by order dated June 10, 1919, instituted a proceeding to inquire and determine whether an order should be made directing plaintiff-in-error to extend its mains, services and apparatus to such an extent as may be necessary to rea-

sonably furnish gas to the residents of sixteen localities named in the order (R., 15).

The plaintiff-in-error appeared by counsel (R., 16), evidence was produced on behalf of the Commission and the Company (R., 16 et seq.) and on April 20, 1920, an order was made by the Commission directing plaintiff-in-error "to extend its gas mains and services in such manner as may be required reasonably *to serve with gas* the residents of the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Lamilton" (R., 6, 7).

The plaintiff-in-error proved, (Ex. 15, R., 286; Ex. 16, R., 288); and counsel for defendant-in-error conceded that at the time of the inquiry it was operating under a confiscatory rate. In objecting to proof of the value of the property of plaintiff-in-error counsel for defendant-in-error stated:

"Mr. Deegan: I might also say, in that connection here, that this Company has shown an operating deficiency at the present time, and certainly, if it is not paying expenses the question of the value of its property would be entirely unnecessary" (R., 194).

Later the evidence was received and defendant-in-error also introduced a valuation by its engineer and proved book value. Three bases of value were before the Court:

Book Value 1918—\$660,591.96 (R., 310, Ex. 34).

1919—\$695,197.09 (R., 326, Ex. 35).

Commission's Value at "normal reproduction cost less depreciation" \$580,527 (R., 260, 261; Ex. 32).

Company's Value \$2,164,540.88 (R., 226; Ex. 27).

The plaintiff-in-error by its engineer estimated the cost of the extension to serve the territory described in the hearing order to be \$693,931.34 (R., 134; Exhibit 14, R., 285).

The defendant-in-error by its engineer introduced estimates of the cost of three possible extensions (R., 204; Exhibit 23, R., 298):

I. To serve territory named in hearing order \$644,-898.84 or an average per consumer of \$463.62 (R., 204) compared with a present investment of \$45.36 per consumer.

II. To serve localities requested by petitioners (R., 204) \$443,652.09 or an average of \$432.41 per consumer.

III. "An independent study taking in only those sections which appear to be mostly apart and which would show the greatest number of consumers per mile of main * * * St. Albans, Springfield, Locust Manor, Locust Lawn, South Jamaica Place, Rosedale and Rosedale Terrace", (R., 203), \$271,574.71 or an average of \$378.-20 per consumer (R., 204).

An extension was ordered to Springfield, Locust Manor, Locust Lawn, South Jamaica Place and Laurilton (R., 6).

A company operating under a confiscatory rate was directed to make an extension which will, at the lowest estimate, cost nearly half the lowest estimate of the value of its whole property.

At the time the final order was made (R., 5) the Public Service Commission had no power to increase the rate plaintiff-in-error might charge for gas. Section 72 of the Public Service Commission's Law (L. 1910, ch. 480) read in part as follows:

"After a hearing and after such investigation * * * the Commission within lawful limits may, by order, fix the maximum price of gas or electricity *not exceeding that fixed by statute* to be

charged by such corporation or person, for the service to be furnished; * * *."

A maximum price of one dollar per thousand cubic feet was fixed for this Company by statute. (L., 1906, ch. 125).

A power to order extension of mains is inconsistent with a lack of remedial power to allow an adequate rate.

On June 2, 1922, a special master in the suit of plaintiff-in-error found the statutory rate of one dollar confiscatory and the statute unconstitutional. The United States District Court for the Southern District of New York confirmed the master's report by final decree entered September 25, 1922.

To this suit the defendant-in-error was a party. None of the parties appealed.

It was found that the cost to plaintiff of gas sold during the years considered was:

1919 per thousand cubic feet.....	\$1.9992
1920 per thousand cubic feet.....	\$1.0950
1921 (three months) ditto.....	\$1.3042

In the face of this experience it follows necessarily that no addition of consumers would have done other than increase the operating deficit.

Assigned errors to be urged.

"First. The Court erred in rendering its final order and judgment in favor of respondent and against the relator.

Second. The Court erred in holding that the order of the Public Service Commission directing the extension of gas mains, services and other apparatus to the five communities of Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton was not in con-

travention to the Fourteenth Article in addition to and amendment to the Constitution of the United States of America in that it deprived relator of its property without due process of law and denied relator the equal protection of the law.

Third. The Court erred in failing to hold that the extension if made would be at a great financial loss to petitioner and would render its business as a whole unprofitable and reduce the return on the investment far below that guaranteed by the Constitution.

Fourth. The Court erred in holding that in considering the expense of the extension there should be taken into consideration the relation existing between relator and the Brooklyn Union Gas Company and further erred in not limiting the consideration of the expense to the business and revenue of the relator.

Fifth. The Court erred in failing to provide for an adequate judicial hearing as to the claim of confiscation made by relator and further erred in failing to make a determination upon its own independent judgment as to both law and fact upon such claim of confiscation.

Sixth. The Court erred in failing to hold that relator was entitled to a fair and reasonable return upon the fair value of its existing property plus the fair and reasonable cost of the extension and where that return is below that guaranteed by the Constitution of the United States of America and the Articles in addition to and amendment thereof the order directing the extension is unconstitutional, illegal and void.

Seventh. The Court erred in holding that the extension ordered by the Public Service Commission was a 'reasonable extension' which the said Commission was authorized to direct under subdivision 2, Section 66 of

The Public Service Commission Law of the State of New York and the Constitution of the United States.

Eighth. The Court erred in not holding that the order of the Public Service Commission was an unlawful and arbitrary exercise of power.

Ninth. The Court erred in not reversing the order of The Public Service Commission of the State of New York directing the aforesaid extension of its service" (R., 354, 355).

Argument.

POINT I.

The Federal Question.

THE ORDER CONFISCATES PLAINTIFF'S PROPERTY.

When the record shows the existence of a question conferring jurisdiction counsel is entitled to be heard upon:

(1) the soundness of the decision of the question below;

(2) Its sufficiency to control the judgment;

(3) the sufficiency of any other point decided to affirm the judgment even if the federal question has been erroneously decided.

Railroad Company *v.* Maryland, 20 Wall 643.

C. B. & Q. Railway *v.* Drainage Commr's., 200
U. S. 561.

Gulf, Colorado &c. Ry. Co. *v.* McGinnis, 228
U. S. 173.

It has been our contention throughout that the Commission's order requiring plaintiff-in-error to extend its mains was a confiscation of its property. Plaintiff-in-error was at all times entitled to a reasonable return upon the fair value of its property. In 1919 its purely nominal income, proved by the Commission, was \$1,799.93 (Ex. 35, R., 340).

The federal question is whether or not an order requiring plaintiff-in-error to extend mains, sell gas and thus consume more capital violates the Fourteenth Amendment by confiscation of property. This question was raised at each point in the case below.

The question of confiscation is presented by an order for the extensions of the mains. Such an order is more than an order to lay mains. As shown by the words of the order in this case, "extend its gas mains and services in such manner as may be required reasonably to serve with gas" (R. 6), it is an order to sell gas at the confiscatory rate.

New York & Queens Gas Co. v. McCall, 245 U. S. 345.

There the assignment of error was that an order directing an extension of mains deprived the company of its property without due process because it required an expenditure upon which the prospective earnings would not provide an adequate return. This Court announced that in such cases it will enter upon such an examination of the record as may be necessary to determine whether the federal constitutional right claimed has been denied by such arbitrary or capricious action on the part of the Commission as to violate the due process clause of the Constitution, (245 U. S. at 348).

POINT II.

The Action of the Commission Was Arbitrary and Capricious.

Nothing could be more arbitrary or capricious than to direct a company concededly consuming its capital under an irremediable rate prescribed by statute to increase such loss by extending its mains to sell more at the same rate.

Therein this case differs from *New York and Queens v. McCall*, supra. In that case the single assignment of error rested on the fact that the "Company would not obtain an adequate return *from the expenditure* required to make the extension" (p. 347). Mr. Justice Clarke wrote: "There is no showing in the record as to the fair value of the entire property of the Gas Company used in the public service, nor of the rate of return which it was earning thereon and therefore even if the return on the cost of complying with the order be conceded to be inadequate, this would not suffice to render the order legally unreasonable," (p. 350).

The cases cited for this proposition lead to the conclusion that if it had been shown there as here that loss on the extension not only would not be absorbed by general earnings but that an existing deficit would be increased by the extension the order would have been held confiscatory.

In the present case the lowest estimate of the fair value of plaintiff's property used in the public service was \$580,527, calculated by the Commission's own engineer (R., 261).

Upon this, concededly, no return was being earned (R., 194).

Uncontradicted evidence showed the more consumers were added the greater would be the loss (R., 181). This

is necessarily so because the loss is due to a confiscatory rate and the insufficiency of income to yield a return on the property.

In the New York and Queens case it did not appear that the company was not earning a return on its property. The contention there was that unless an adequate return was earned on the cost of the extension, apart from the general property, the order was confiscatory.

Here there is an existing deficit, the value of all the property is proved and it is uncontradicted that the addition of new consumers will increase the loss (R., 181). The effect of this order is quite the same as if the Commission had reduced an already confiscatory rate.

The Commission not only conceded but later proved a lack of return in 1919. Commission Exhibit 35 (R., 335) shows a decrease in corporate surplus during the year of \$8,815.57. The same exhibit (R., 337) shows a net corporate loss of \$7,833.89.

Thus the Commission acquiesced in the Company's evidence of an operating deficit by putting in evidence, as its only testimony on the subject, the Company's report to it for that year. Such acquiescence binds the defendant-in-error to this figure.

Ohio Utilities Co. v. Commission, 267 U. S. 359.

The Appellate Division sought to escape the consequence of this undisputed evidence by consideration of another company which was not a party. After quoting from opinions of the Commission and a judge at Special Term in the cases of *still other* companies, the learned justice at the Appellate Division writes:

“Therefore in considering the expense involved in the extension of this service, the Public Service Commission should take into consideration the relation existing between this Company and the Brooklyn Union Gas Company and was not nec-

essarily limited to a consideration of the expense with relation either to the capitalization or stated income of the relator. A public service corporation cannot minimize the duty it owes to the public by incorporating a portion of its distributing system" (R., 345).

Substitute names for descriptive words and the learned justice has said: -

"The Brooklyn Union Gas Company cannot minimize the duty it owes the inhabitants of Springfield by incorporating the Woodhaven Company."

The fallacy of this reasoning is demonstrated by two facts:

- (1) The Brooklyn Union Gas Company owes no duty to the inhabitants of Springfield.
- (2) The Brooklyn Union Gas Company has not incorporated part of its system.

On the contrary the Woodhaven Gas Light Company was incorporated in 1871 (Commission Ex. 1; R., 279) in which year it received a franchise under which it operates (id: R., 281) and its stock was not acquired by The Brooklyn Union Gas Company until 1897 (R., 222). Moreover, the Commission held plaintiff in error "is the only corporation which has a franchise to serve gas in the territory under consideration" (R., 8).

The parties to this proceeding are the plaintiff-in-error and the Public Service Commission, defendant-in-error. No one ever dreamed of The Brooklyn Union Gas Company as a party until Mr. Justice Page delivered his opinion. Defendant-in-error determined who the parties should be and against whom orders should be made. At the opening its counsel announced:

"We take this proceeding on a motion of the Commission. It arose as a result of complaints

which had been filed. It has been the practice of the Commission to institute these hearings upon its own motion, rather than upon the complaint, because it gives more flexibility to the proceeding," (R., 16).

Moreover the hearing order (R., 15) was entitled "In the Matter of the Hearing on the Motion of the Commission * * *," was directed to the plaintiff-in-error only and served upon it alone.

When in the course of the hearings an attorney appearing for a committee of inhabitants sought to cross-examine a witness on the value of the property of The Brooklyn Union Gas Company an objection upon the ground that it was not a party to this proceeding was sustained, (R., 197).

The Commission in its opinion made no mention of The Brooklyn Union Gas Company (R., 7 et seq.). Thus defendant-in-error conducted this proceeding as an inquiry into the affairs of the plaintiff-in-error only, treating it as a separate entity and, by its rulings and the nature of the proceeding itself, excluded The Brooklyn Union Gas Company from all consideration.

Having thus itself determined the theory under which the hearings were conducted, defendant-in-error cannot now proceed upon a theory introduced without evidence by the Appellate Division.

N. Y. Elevated R. Co. v. Fifth Nat'l Bank, 135 U. S., 432.

There it is held that a party who procures or acquiesces in rulings under which a trial is conducted thereby waives the right to object to them.

How much more is this true when the party is also the tribunal before which the trial is held of which it thus has entire control. Had this objection not been sustained plaintiff-in-error could easily have shown the

condition of The Brooklyn Union Gas Company which soon after became *res judicata* against this defendant-in-error. *Newton v. Brooklyn Union Gas Co.*, 258 U. S. 604.

Use of a subsidiary does not necessarily subject the parent company to the jurisdiction of a court.

Cannon Mfg. Co. v. Cudahy Co., 267 U. S. 333.

The reality of corporate separation in the present case was recognized by the defendant-in-error, not only by the procedure which it adopted but also in its rulings. The Appellate Division attempts to justify confiscation of plaintiff-in-error's property by an assumed relationship with another company.

These facts are in evidence:

- (1) The Brooklyn Union Gas Company owns the stock of plaintiff-in-error,
- (2) Plaintiff-in-error buys all its gas from the owner of its stock,
- (3) The two companies have certain common officers and employees.

Having no further evidence in the record to sustain his conclusion the learned justice at the Appellate Division went to a case to which neither the plaintiff-in-error nor The Brooklyn Union Gas Company were parties. He quotes as if the language aptly described facts in evidence. Note however even he commences:

"The relation between the Brooklyn Company and *three other* companies similarly situated was very aptly described by Commissioner Hayward in *Matter of Hermann v. Newtown Gas Co.* (7 P. S. C. Rep. 1st Dist. 101) in the following language &c." (R., 345).

The opinion of the state court will be examined to determine the ground of its decision.

Gross v. U. S. Mortgage Co. 108 U. S. 477.

It plainly appears that the Appellate Division has declined to reverse this order because of an alleged identity of plaintiff-in-error and the Brooklyn Company. A right or immunity set up or claimed under the Constitution may be denied as well by evading a direct decision thereon as by positive action. If a federal question is fairly presented by the record and its decision is actually necessary to the determination of the case a judgment which rejects the claim but avoids all reference to it is as much against the right as if it had been specifically referred to and the right directly denied.

Chapman v. Goodnow, 123 U. S. 540.

By bringing in the Brooklyn Union Gas Company the Court denied plaintiff in error its right claimed under the Constitution.

This court in the New York & Queens Case, *supra*, had declined to reverse a similar order because the company's property and earnings were not in evidence. For the express purpose of meeting this situation counsel in this case proved these facts. Their presence necessitated decision of the federal question. Seeking to avoid the clear proof of confiscation the Appellate Division cannot say it is lacking by reason of corporate identity. Proof of the Brooklyn's Company's condition is required. Having tried its case upon a different theory, not having made the Brooklyn Company a party and in fact excluded proof concerning it the defendant-in-error cannot sustain its order by an assumed corporate identity, as Mr. Justice Page has done, in the absence of the Brooklyn Company and a want of proof excluded by the Commission itself, especially when inclusion of the other corporation would have shown as later proved in *Newton v. Brooklyn Union Gas Co.*, 258 U. S. 604, now *res judicata* against this defendant, that it was also operating at a deficit.

The Appellate Division seems to have thought itself at liberty to make an order against The Brooklyn Union Gas Company not a party to the record. As stated above use of a subsidiary does not necessarily subject the parent company to the jurisdiction. If The Brooklyn Union Gas Company were actually doing business in this territory through an independent agency this would still be true.

Cannon Mfg. Co. *v.* Cudahy Packing Company,
supra, and cases cited.

The Commission itself ruled in this case that the Woodhaven Company is the only corporation before it and excluded the Brooklyn Company (R. 197). In each of the cases in this Court where a corporation has been held for an act or omission of its subsidiary or a liability of the parent enforced against the subsidiary both corporations have been parties to the suit and the relationship has been fully proved. An example clearly distinguishable from the present case is *Chicago M. & St. P. Ry. v. Minn. Civic Ass'n*, 247 U. S. 490 where both parents of a subsidiary were parties and it was shown affirmatively that stock ownership had been resorted to for the purpose of controlling a subsidiary as a mere agency. So in *U. S. v. Lehigh Valley R. R. Co.* 254 U. S. 255 all the companies were joined as parties and Sales Company clearly shown to be a mere agency.

If the Commission had proceeded against the Brooklyn Company its property and operating deficit would have been shown and constituted a complete defense.

The Court below has ridden over the obstacle of confiscation on the back of another company not a party to the proceeding and therefore not a lawful conveyance. Such evasion of rights is capricious and arbitrary.

POINT III.

Only a federal question was decided and therefore controls the judgment.

It will doubtless be argued that the Public Service Commission and the Courts reviewing its order decided that a promise to extend mains was made by plaintiff in error. Deputy Commissioner Glennon wrote:

“Before complaining to the Commission, several conferences were had between representatives of the Company and the Central Gas Committee of the Fourth Ward of the Borough of Queens, with the view to the installation of gas mains. It seems that the Company even went so far as to send its representative to Springfield and there, on one occasion, he addressed a meeting of the residents on the question of a supply of gas. I am convinced that the representatives of the Company did promise to make the necessary installations when this matter was taken up in 1916. Many of the houses in these localities are piped for gas. This would seem to indicate that promises had been made by the Company officials to supply the demand. A considerable amount of gas pipe of different sizes was ordered and subsequently delivered to the Company's storage yards at Jamaica. The members of the Central Gas Committee testified that they had been led to believe by one of the Company's superintendents that this pipe was to be used for an extension of service into Springfield. I am satisfied that the pipe in question was ordered primarily for the purpose of constructing gas mains to Springfield. Had the pipe been used by the Company at the time it was ordered and promised, the Company would have saved a considerable amount of money in making its extensions. That the cost of making any large extension at the present time is high must be conceded, but as the Court of Appeals pointed out

in *People ex rel. New York and Queens Gas Co. vs. McCall*, 219 N. Y. 84, 'It is the duty of the relator to supply their needs if practicable (*Wisc. M. & P. R. R. vs. Jacobson*, 179 U. S. 287; *People ex rel. Woodhaven Gas Light Company vs. Deehan*, 152 N. Y. 528). The cost of the extension is not the only matter for consideration (*Oregon R. R. & N. Co. vs. Fairchild*, 224 U. S. 510, 529).''

The Appellate Division held there was evidence to sustain this finding of the 1916 promise. It was not, however, the basis of the order appealed from, for the conclusive reason that the Commission had no power to enforce this promise. It has no power to enforce a contract made upon consideration, much less this so-called promise.

The Public Service Commission of the State of New York has no power to enforce a promise.

''*Peo. ex rel. Loughran vs. Bd. of Railroad Comms.*, 158 N. Y., 421.

In that case the railroad company promised to locate and maintain a station and interested inhabitants of the locality subscribed and paid a sum of money and conveyed land to the railroad company and in consideration of this the promise was made by the President and was subsequently ratified at a shareholder's meeting. The station was constructed and used for fifteen years and upon the application of the railroad company authority was given to discontinue it. Judge Vann, for the Court, wrote as follows: (p. 430):

'The board properly received the contract between certain citizens and the railroad company in evidence, but it had no power to enforce that contract or set it aside. Its jurisdiction does not extend to the enforcement of contracts as such or to the award of relief for their violation. That power can be exercised only by the

courts. Any attempt by the Commissioners to enforce the contract, as a contract, would have been illegal, and their omission to enforce it is no bar to an action by the parties aggrieved in the proper court. They do not constitute a court, although in many respects they act as judges. They have no inherent authority, but depend for their power upon the legislature, which has not attempted to invest them with the function of granting or withholding relief based upon contractual obligations.' "

In the Court of Appeals Mr. Ledyard P. Hale, counsel for the Public Service Commission, wrote in his brief (p. 34) as follows:

"We do not claim that the Commission had power to enforce the promise made in this case, but merely that the promise was one of the matters to be taken into account in determining whether the extension was reasonable. The promise when considered in connection with the testimony showing that the principal purpose in ordering large quantities of pipe in October, 1916, was to fulfill that promise is important, because it was a recognition by the gas company of the reasonableness and propriety of the extension, and of its probable profitableness within a reasonable time."

Counsel at the hearing before the Commission said no more for it (R., 103).

A promise the enforceability of which was thus expressly disclaimed cannot have been the basis of the decision of the Court in which it was made.

The Public Service Commissions Law provides (Sec. 23, Ch. 48, Consol. Laws) :

“Every order of a Commission shall take effect at a time therein specified and shall continue in force either for a period therein designated therein or until changed or abrogated by the Commission, *unless such order be unauthorized by this chapter or any other act or be in violation of a provision of the Constitution of the State or of the United States.*”

An order unauthorized by the statute has no force and therefore it is submitted that the finding of a promise cannot defeat the Federal right.

The rule is stated in the head note of a case squarely presenting this question. *So. Pac. Co. v. Schuyler*, 227 U. S. 601:

“Where the decision of the State Court adverse to plaintiff-in-error proceeds upon two independent grounds, one of which does not involve a Federal question and is sufficient to support it, the writ of error will be dismissed or the judgment affirmed according to circumstances.

“On writ of error to a State Court, while this Court does not ordinarily review findings of fact, if a Federal right has been denied as the result of a finding of fact which is without support in the evidence, this Court may examine the evidence to the extent necessary to give plaintiff in error the benefit of the Federal right asserted.”

The promise is not an independent ground of this decision. It is better described by Mr. Justice Hughes in *N. & W. R. Co. v. W. Va.*, 236 U. S. 605. He wrote (p. 609) :

“2. So far as the findings are concerned, we have in the present case simply a general, or ultimate, conclusion of fact which is set forth in the decree in the state court; and it is necessary for

us, in passing upon the Federal right which the plaintiff-in-error asserted, to analyze the facts in order to determine whether that which purports to be a finding of fact is so interwoven with the question of law as to be in substance a decision of the latter."

We have argued that the promise is not sufficient to support the order because the Commission was without power to enforce the promise.

If the promise was the ground of the decision in the New York Courts "a Federal right has been denied as the result of a finding of fact which is without support in the evidence."

Reference to the testimony of the committee of citizens who, in the language of the Deputy Commissioner, had conferences with representatives of the plaintiff in error will demonstrate that neither the Public Service Commission nor any other body could enforce the so-called promise. The principal witness was Mr. Schabernhorn, who testified on his direct examination as follows (R., 24):

"Q. I am asking you for the conversation. Direct your attention toward that alone. A. We told Mr. White, of the gas company, that we came to them with reference to obtaining the extension of the mains to Springfield. They told us that they had been long considering the advisability of running gas to Springfield; that they would give us the extension. They had counted the number of houses, had figured out the cost, and they were about ready to make the extension. I said, 'We will have to go back and report to our people something definite. Are we to understand that this is a definite promise of an extension?' They said, 'Well, the condition is this: We do not want you to go out of here and tell the other communities, such communities as Rosedale, Jamaica Junction and St. Albans that we are going to make this extension, because if you do that, we will

have all those fellows on our necks, and they will also insist on an extension, and we cannot afford to make that extension at the present time.' I said, 'About when could we expect this,' and was told that in probably six months."

This conversation was in the Fall of 1916. Upon cross examination Mr. Schaberhorn testified (R., 53):

"By Mr. Dykman:

Q. So I understand you to say now that at the first meeting in the office of the Brooklyn Union Gas Company no promise was made? A. You understand me to say this, that the first meeting was the time they told us that we would get gas, provided there was no active legislation reducing the price of gas in our territory.

Q. And that was all that was said? A. No, there were other things.

Q. That was the understanding you got at the first meeting, that if the rate case went against the company, there would be no extension? A. There would be no extension. That was the May meeting.

Q. May, 1916? A. Yes, sir.

Q. So we are agreed now on two points: first, that the meeting was held in May, 1916; and second, that at the meeting no promise was made? A. But there was another meeting, an October meeting; so there were two meetings in the gas company office."

Mr. Schaberhorn was Chairman of a committee of citizens and Mr. Will Z. Izor was a member of the committee and one of the subsequent meetings was at his house. Mr. Izor testified (R., 105) that he was one of a committee with Mr. Schaberhorn who visited Mr. White's office in October, 1916. That they had "prepared a little plan in typewriting telling what we desired in our section." He further testified (R., 105):

"Q. Who did the presentation, if you recall; did you, as Chairman? A. As I remember it, I

read it. Yes, I am sure. There was quite a little discussion there. We could not get them to say any particular time when they would do it. They stated that they had been looking over this section and knew the section was growing; they were going to get down there just as soon as conditions were possible to come down. So we went away with that assurance that there might be something doing. This is about all that took place at that meeting, as I remember it."

Mr. Izor further testified (R., 108):

"Q. Instead, Mr. Izor, of taking up further time by calling your attention to particular testimony which has been given, I want to ask you one general question: Was any promise, at any time, made by Mr. White, or by anybody else, representing the gas company, to you personally, or to you as Chairman of this Committee, that extensions would be made to the locality which you represent?

A. Not at any definite time.

Q. Not at any definite time. That is, it was never stated to you "We will put it in next week week, or next month," or anything like that? A. We never could get a definite answer from him as to the time: "Possibly next year, possibly so and so, as soon as conditions are such that it can be done."

There was a meeting of the Springfield Citizens' Association, March, 1919, at which Mr. White made a public address in a hall. Mr. Schaberhorn testified (R., 28):

"Q. What did he say, briefly? A. He said that the gas company at the present time could not see its way clear to make an extension to any part of that territory. He recited—he had a memorandum of the figures and costs, and also a map. He put that map on the stage and outlined the section which included miles and miles of territory, which we are not interested in, because it covers miles

and miles of low land, water land, all foul land. He said, "We will not be able to make any extensions into this territory until the cost of material and the cost of labor is reduced to pre-war times.

Q. He said that last March? A. He said that last March.

Q. Did he tell you when he expected to be able to do it? A. No."

Mr. Schaberhorn, answered a question of Deputy Commissioner Glennon concerning the White speech in March, 1919, as follows (R., 51):

"By Deputy Commissioner Glennon:

Q. What reason did he assign in public, if any?

A. The reason he assigned was that the price of material—and he had given prices—had risen so high that it was impossible to make the extension until prices were reduced to what they were during pre-war times. Another reason that he gave was the fact that some of the pipes that had been bought for the extension and which had been delivered at Jamaica had been taken by the Government during the war."

The counsel for the 'communities' read in evidence the following letter (R., 112):

April 23, 1917.

"MR. WILL C. IZOR,
Chairman of the Springfield Citizens
Association, Gas Committee,
No. 1 Madison Avenue,
New York City.

Dear Sir:

In reply to your communication of the 18th instant, addressed to Mr. J. T. White, Superintendent of our Street Department, in reference to the extension of mains into Springfield section, we have been unable up to the present time to make the extensions, owing to our inability to pro-

cure the necessary material, due to the present general war conditions.

Your truly,
(Sgd) F. B. JOURDAN,
Secretary of the
Woodhaven Gas Light Co."

It is freely conceded that prior to 1916 the relator had surveyed this territory and had considered extensions of gas mains into it and intended, as it intends now, to make this extension and all other extensions as rapidly as its finances will allow and the business offered justify it, and what is called a promise is in reality no more than a declaration of such an intention.

Deputy Commissioner Glennon did not base his decision upon the so-called promise. The extension ordered is not the extension discussed, viz., to Springfield. The Commission ordered an extension 'reasonably' to serve five communities.

On redirect Mr. Schaberhorn testified (R., 51):

"Q. Do you recall exactly, or approximately, when your first meeting with Mr. White was held, the meeting at the gas company office?

A. October, 1916.

Q. Are you sure it was not in May, 1916?

A. No, I am not sure that it was not in May, but I took a memorandum from the books of the Association, and it would appear from those books that it was in October, 1916.

Q. You are not certain of that, however?

A. I am not certain.

Q. It may have been in May, 1916?

A. Yes, sir.

Q. Was anything said then, or was not something said at that meeting about a pending rate case before the Public Service Commission?

A. Yes, sir.

Q. Were you not told that if that case went against the company, any extension would be impossible?

A. Yes, sir.

Q. You said the other day, Mr. Schaberhorn, in talking about this meeting, that you were asked not to say anything to the people in Rosedale, Jamaica Junction and St. Albans?

A. Yes, sir.

Q. You are now asking for an extension to Rosedale and St. Albans?

A. Yes, sir.

Q. So that even upon your own statement you have never been promised gas for a part of the territory which you now ask gas for?

A. No."

There was an order of this Commission made May 25, 1916, reducing the price of gas in the Woodhaven district, a part of the 4th Ward of Queens (R., 54). It continued in effect until May 1, 1919. In that month the same representative of the plaintiff-in-error told the same citizens the extension was impossible because of increased costs.

It was held by the Appellate Division of the Supreme Court of New York that where the Commission before the World War had directed a street railway company to add to its equipment it should order a rehearing because of the financial changes due to the war.

Peo. ex rel. B. H. R. R. Co. v. Public Service Comm., 157 App. Div. 698.

We then have a statement by Mr. White in May, 1916, that an extension would be made if rates were not decreased followed immediately by a decrease; another meeting October, 1916, when Mr. White said "they were going to get down there just as soon as conditions were possible to come down" and that the citizens "could never get a definite answer from him as to the time; possibly next year, possibly so and so, as soon as conditions are such that it can be done."

In March, 1919, Mr. White told the citizens "it was impossible to make the extension until prices were reduced to what they were in pre-war times". In June, 1919 (R., 13), the Commission instituted the proceeding which terminated in the order now under review.

The finding of a promise has no support in the evidence.

It was instituted under Section 66 of the Public Service Commissions Law which provides that the Commission shall have power

2. * * * to order reasonable improvements and extensions.

The hearing order was to determine whether an order should be made directing the Company to extend its mains "to such extent as may be necessary to reasonably furnish gas to the residents of Springfield" and other localities.

The question was solely what extension was reasonable, i. e. non-confiscatory, and this is a Federal question.

The order does not purport to enforce a promise, but only to direct extensions found to be reasonable.

Let it be assumed for the argument that a promise was made in 1916 to a self-constituted committee of citizens. Three years elapse during which the United States enters and concludes a great war and prices of every commodity and labor reach an unprecedented height from which they have not receded. No attempt was made to enforce any promise and as shown above it could not be enforced under the law of New York. In 1918 and 1919 the rate for gas allowed by statute becomes confiscatory and income will be decreased by the addition of more consumers.

The year 1919 arrives. Again the citizens ask for the extension and are told the financial situation makes it impossible.

The plaintiff in error is operating under a confiscatory rate. Can an increased confiscation be justified by a promise to extend made at a time when rates were compensatory? Exhibit 18 (R., 291) and the record show that in 1916 a rate was fixed for this Company and that the Commission found a reasonable price for it pay for gas (R., 185). Robert W. Bush for plaintiff in error, explaining Exhibit 18, testified (R., 185), that it was a tabulation showing the increased cost of coal, oil and gas production labor at the works since the date when the defendant in error had fixed the reasonable price for this company to pay for gas, distribution cost and return on property. This witness was not cross examined and no evidence produced to meet his figure of 71.38 cents per thousand as the reasonable cost of gas. Adding to this the amounts allowed by the defendant-in-error for distribution and return the uncontradicted evidence shows a minimum reasonable rate of \$1.1638 per thousand cubic feet for gas sold consumers at \$1. pursuant to the statute which defendant-in-error had no power to increase (R., 291).

Can it properly be said that the promise made in 1916 controls the confiscation shown in 1919? Such a finding cannot control a suit based upon constitutional right. The iniquity of inflexible statutory rates is perfectly illustrated by this case. It is not one in which the company seeks to abandon a service already undertaken. The order in the present case is in effect an order dealing with rates because the company was forbidden by law to charge an adequate rate. It had assumed no obligation to serve consumers in the new territory at a confiscatory rate. The principal witness on the subject

of the promise testified (R., 51) that the meeting with representatives of the company occurred in May or October 1916. The order of defendant in error fixed 95 cents per thousand for the rate as of May 27, 1916 (R., 54, 185). This witness testified (R., 52):

“Q. Was anything said then or was not something said at that meeting about a pending rate case before the Public Service Commission?

A. Yes, sir.

Q. Were you not told that if that case went against the company any extension would be impossible?

A. Yes, sir.”

Accordingly we have it conceded that the promise was conditioned on an adequate rate. There is therefore neither an abandonment of service already begun nor an attempt to escape any obligation voluntarily assumed.

An order is inherently arbitrary which increases confiscation upon the basis of a promise concededly conditioned on the existence of a fair rate.

Let us test the effect of this promise as found by the Court below. Assuming this plaintiff in error had determined to abandon its franchise and cease operations entirely. In the absence of contract it cannot be compelled to continue to operate at a loss.

Brooks Scanlon Co. v. Railroad Commission of Louisiana, 251 U. S. 396.

This is not such a contract as would prevent plaintiff-in-error from entirely discontinuing operation. It is not sufficient therefore to overcome the federal question and sustain the judgment. The claim of federal right specially set up from the outset dominated every part of the case. The rate having become confiscatory enforce-

ment of a promise conditioned on a fair rate is a denial by evasion of the federal right.

C. B. & Q. Railway *v.* Drainage Commrs., 200
U. S. 561.

CONCLUSION.

The judgment should be reversed and judgment rendered in favor of the plaintiff-in-error.

Respectfully submitted,

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Of Counsel.

18
OCT 9 1925

WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States

October Term 1925.

CALENDAR No. 33.

THE PEOPLE OF THE STATE OF NEW YORK on the relation
of THE WOODHAVEN GAS LIGHT COMPANY,
Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE
OF NEW YORK,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

**APPENDIX TO PLAINTIFF IN ERROR'S BRIEF.
STATUTES.**

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WILLIAM N. DYKMAN,
JACKSON A. DYKMAN
Of Counsel.

LAWS OF NEW YORK.

Laws 1910, Chapter 480.

AN ACT in relation to public service commissions, constituting chapter forty-eight of the consolidated laws.

Became a law June 14, 1910, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XLVIII OF THE CONSOLIDATED LAWS.

THE PUBLIC SERVICE COMMISSIONS LAW.

- Article 1. Public service commissions; general provisions (§§ 1-24).
2. Provisions relating to railroads, street railroads and common carriers (§§25-40).
 3. Provisions relating to the powers of the commissions in respect to railroads, street railroads and common carriers (§§45-59).
 4. Provisions relating to gas and electric corporations; regulation of price of gas and electricity (§§64-77).
 - 4-a. Provisions relating to steam corporations; regulating price of steam (§§78-89a) (added by L. 1913, ch. 505).
 5. Provisions relating to telegraph and telephone lines and to telephone and telegraph corporations (§§90-103) (added by L. 1910, ch. 673).
 6. Commissions and offices abolished; saving clause; repeal (§§120-127). (Thus renumbered by 1910, ch. 673.)

ARTICLE I.

PUBLIC SERVICE COMMISSIONS: GENERAL PROVISIONS.

- SECTION
1. Short title.
 2. Definitions.
 3. Public service districts.
 4. Commissions established; appointment; removal; terms of office.
 5. Jurisdiction of commissions.
 6. Counsel to the commissions.
 7. Secretary to the commissions.
 8. Additional officers and employees.
 9. Oath of office; eligibility of commissioners and officers.
 10. Offices of commissions; meetings; official seal; stationery.
 11. Quorum; powers of a commissioner.
 12. Counsel to the commissions; duties.
 13. Salaries and expenses.
 14. Payment of salaries and expenses.
 15. Certain acts prohibited.
 16. Reports of commissions.
 17. Certified copies of papers filed to be evidence.
 18. Fees to be charged and collected by the commissions.
 19. Attendance of witnesses and their fees.
 20. Practice before the commissions; immunity of witnesses.
 21. Court proceedings; preference.
 22. Rehearing before commission.
 23. Service and effect of orders, stay.
 24. Action to recover penalties or forfeitures.

Section 1. Short title.—

§ 2. Definitions.—

11. The term "gas corporation," when used in this chapter, includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any gas plant except where gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to others.

§ 3. Public service districts. There are hereby created two public service districts, to be known as the first district and

the second district. The first district shall include the counties of New York, Bronx, Kings, Queens and Richmond. The second district shall include all other counties of the state. (*Amended by L. 1916, ch. 422.*)

§ 4. Commissions established; appointment; removal; terms of office.—

§ 5. Jurisdiction of commissions.—1. The jurisdiction, supervision, powers and duties of the public service commission in the first district shall extend under this chapter:

e. To the manufacture, sale or distribution of gas and electricity for light, heat or power in the first district, to gas plants and to electric plants therein, and to the persons or corporations owning, leasing or operating the same.

2. And in addition thereto, the commission in the first district shall have and exercise all powers heretofore conferred upon the board of rapid transit railroad commissioners under chapter four of the laws of eighteen hundred and ninety-one, entitled "An act to provide for rapid transit railways in cities over one million inhabitants," and the acts amendatory thereof, together with such other necessary powers as may be requisite to the efficient performance of the duties imposed upon said board by said act.

§ 6. Counsel to the commissions.—

§ 7. Secretary to the Commission.—

§ 8. Additional officers and employees.—

§ 9. Oath of office; eligibility of commissioners and officers.—

§ 10. Offices of commissions; meetings; official seal; stationery, etc.—1.

§ 11. Quorum; powers of a commissioner.—

§ 12. Counsel to the commissions; duties.—

§ 13. Salaries and expenses. * * *

§ 14. Payment of salaries and expenses. * * *

§ 15. Certain acts prohibited.—

§ 16. Reports of commissions.—1.

§ 17. Certified copies of papers filed to be evidence.—

§ 18. Fees to be charged and collected by the commissions. * * *

§ 19. Attendance of witnesses and their fees.—1.

§ 20. Practice before the commissions; immunity of witnesses.—

§ 21. Court proceedings; preferences.—

§ 22. Rehearing before commission.—

§ 23. Service and effect of orders; stay.—1. Every order of a commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the code of civil procedure. It shall be the duty of every person and corporation to notify the commission forthwith in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served must if so required in the order notify the commission in like manner whether the terms of the order are accepted and will be obeyed. Every order of a commission shall take effect at a time therein specified and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission, unless such order be unauthorized by this chapter or any other act or be in violation of a provision of the constitution of the state or of the United States.

2. No order staying or suspending an order of the commission fixing any rate, fare or charge or joint rate, fare or charge shall be made by the supreme court otherwise than upon notice and after hearing; and if the order of the commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great and irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. (*Amended by L. 1914, ch. 240.*)

§ 24. Action to recover penalties or forfeitures.—

ARTICLE II.

PROVISIONS RELATING TO RAILROADS, STREET
RAILROADS AND COMMON CARRIERS.

- § 25. Application of article. * * *
- § 26. Safe and adequate service; just and reasonable changes. * * *
- § 27. Switch and side-track connections; powers of commissions. * * *
- § 28. Tariff schedules; publication. * * *
- § 29. Changes in schedule; notice required; power of suspension by commission. * * *
- § 30. Concurrence in joint tariffs; contracts, agreements or arrangements between any carriers. * * *
- § 31. Unjust discrimination. * * *
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- § 33. Transportation prohibited until publication of schedules; rates as fixed to be charged; passes prohibited. * * *
- § 34. False billing, etc., by carrier or shipper. * * *
- § 35. Discrimination prohibited; connecting lines. * * *
- § 36. Long and short hauls. * * *
- § 37. Distribution of cars. * * *
- § 38. Liability for damage to property in transit. * * *
- § 39. Continuous carriage. * * *
- § 40. Liability for loss or damage by violation of this chapter. * * *
- § 41. Routing of shipments by shipper of goods * * *

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* * *

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* * *

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§ 55. Approval of issues of stock, bonds and other forms of indebtedness. * * *

§ 55-a. Reorganizations. * * *

§ 56. Forfeiture; penalties. * * *

§ 57. Summary proceedings. * * *

§ 58. Penalties for other than common carriers. * * *

§ 59. Duties of commissions as to interstate traffic. * * *

ARTICLE IV.

PROVISIONS RELATING TO GAS CORPORATIONS AND ELECTRICAL CORPORATIONS; REGULATION OF PRICE OF GAS AND ELECTRICITY.

SECTION 64. Application of article.

- 65. Safe and adequate service; just and reasonable charges; unjust discrimination; unreasonable preference.
- 66. General powers of commissions in respect to gas and electricity.
- 67. Inspection of gas and electric meters.
- 68. Approval of incorporation and franchises; certificate.
- 69. Approval of issue of stock, bonds and other forms of indebtedness.
- 69-a. Reorganizations.
- 70. Approval of transfer of franchise.
- 71. Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints.
- 72. Notice and hearing; order fixing price of gas or electricity, or requiring improvements.
- 73. Forfeiture for noncompliance with order.
- 74. Summary proceedings.
- 75. Defense in case of excessive charge for gas or electricity.
- 76. Jurisdiction.
- 77. Powers of local officers.

§ 64. **Application of article.** This article shall apply to the manufacture and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power, and the generation, furnishing and transmission of electricity for light, heat or power.

§ 65. **Safe and adequate service; just and reasonable charges; unjust discrimination; unreasonable preference.**
 1. Every gas corporation, every electrical corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electrical corporation or municipality for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the

commission having jurisdiction. Every unjust or unreasonable charge made or demanded for gas, electricity or any such service, or in connection therewith, or in excess of that allowed by law or by the order of the commission is prohibited.

2. No gas corporation, electrical corporation or municipality shall directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas or electricity or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

3. No gas corporation, electrical corporation or municipality shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

4. Nothing in this chapter shall be taken to prohibit a gas corporation or electrical corporation from establishing a sliding scale for a fixed period for the automatic adjustment of charges for gas, electricity or any service rendered or to be rendered and the dividends to be paid to stockholders of such gas corporation or electrical corporation, provided that the sliding scale shall first have been filed with and approved by the proper commission; but nothing in this subdivision shall operate to prevent the commission after the expiration of such fixed period from fixing proper, just and reasonable rates and charges to be made for service as authorized in this article.

§ 66. General powers of commissions in respect to gas and electricity. Each commission shall within its jurisdiction:

1. Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for

the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased or operated by any gas corporation or electrical corporation.

2. Investigate and ascertain, from time to time, the quality of gas supplied by persons, corporations and municipalities; examine or investigate the methods employed by such persons, corporations and municipalities in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same, and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities.

3. Have power by order to fix from time to time standards for the measurement of the purity of gas and for the measurement of the illuminating power of gas, and for the measurement of the heating power of gas to be manufactured, distributed or sold by persons, corporations or municipalities for lighting, heating or power purposes, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied and of the lamps furnished by the persons, corporations or municipalities generating and selling electric current, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons, corporations or municipalities. For the purpose of determining whether the gas manufactured, distributed or sold by such persons, corporations or municipalities for lighting, heating or power purposes conforms to the standards of illuminating power, heating power, purity and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate

the plants and methods employed in manufacturing, delivering and supplying gas or electricity, and shall have access through its members or persons employed and authorized by it to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture, transmission or distribution of gas or electricity by any such person, corporation or municipality. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor.

4. Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations and electrical corporations and by municipalities engaged in the manufacture, sale and distribution of gas and electricity for light, heat or power. It may also in its discretion prescribe, by order, forms of accounts, records and memoranda to be kept by such persons, corporations and municipalities. Notice of alterations by the commission in the required method or form of keeping a system of accounts shall be given to such persons or corporations by the commission at least six months before the same shall take effect. Any other and additional forms of accounts, records and memoranda kept by such corporation shall be subject to examination by the commission.

5. Examine all persons, corporations and municipalities under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such person, corporation or municipality are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of opinion, after

a hearing had upon its own motion or upon complaint, that the property, equipment or appliances of any such person, corporation or municipality are unsafe, inefficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

6. Require every person and corporation under its supervision and it shall be the duty of every such person and corporation to file with the commission an annual report, verified by the oath of the president, treasurer, general manager or receiver, if any, thereof. The verification shall be made by said official holding office at the time of the filing of said report, and if not made upon the knowledge of the person verifying the same shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The report shall show in detail (a) the amount of its authorized capital stock and the amount thereof issued and outstanding; (b) the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; (c) its receipts and expenditures during the preceding year; (d) the amount paid as dividends upon its stock and as interest upon its bonds; (e) the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees; (f) the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired; and (g) such other facts pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be filed at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms. When any such report is defective or believed to be erroneous, the commission shall notify the person, corporation or municipality making such report to amend the same within a time prescribed by the commission. Any such person or corporation or municipality which shall neglect to make any such report or which shall fail to correct any such report

within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same, to be sued for in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and be credited to the general fund. The commission may extend the time prescribed for cause shown.

7. Require each municipality engaged in operating any works or systems for the manufacture and supplying of gas or electricity to make an annual report to the commission, verified by the oath of the general manager or superintendent thereof, showing in detail, (a) the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding for lighting purposes; (b) its receipts and expenditures during the preceding year, (c) the amount paid as interest upon its bonds and upon other forms of evidence of indebtedness; (d) the name of and the amount paid to each person receiving a yearly or monthly salary, and the amount paid as wages to employees; (e) the location of its plant and system with a full description of the property; and (f) such other facts pertaining to the operation and maintenance of the plant and system as may be required by the commission. Such report shall be in the form, cover the period and be filed at the time prescribed by the commission.

8. Have power, either through its members or inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, power houses, ducts, conduits and offices of any of such corporations, persons or municipalities.

9. Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation, person or municipality, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

10. Have power to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring production of originals by subpoena duces tecum the commission or any com-

missioner may require sworn copies of any such books, records, contracts, documents and papers, or parts thereof, to be filed with it. The commission may require of all such corporations, persons or municipalities, specific answers to questions upon which the commission may need information, and may also require such corporations, persons or municipalities to file periodic reports in the form, covering the period and filed at the time prescribed by the commission. If such corporation, person or municipality shall fail to make specific answer to any question or shall fail to make a periodic report when required by the commission as herein provided within the time and in the form prescribed by the commission for the making and filing of any such report or answer, such corporation, person or the officer of the municipality shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report or answer. Such forfeiture shall be recovered in an action brought by the commission in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and be credited to the general fund.

11. Have power in all parts of the state, either as a commission or through its members, to subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted before it, or conducted by it in reference to any matter within its jurisdiction under this article.

12. Have power to require every gas corporation, electrical corporation and municipality to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation or municipality; but this subdivision shall not apply to state, municipal or federal contracts. Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, an electrical corporation or municipality in compliance with an order of

the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe. No corporation or municipality shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation or municipality refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations to carry into effect the provisions of this subdivision as it may deem necessary, and to modify or amend such rules or regulations from time to time.

13. In case any electrical corporation or gas corporation is engaged in carrying on any business other than owning, operating or managing a gas plant or an electric plant, which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such gas plant or electric plant, said corporation in respect of such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the assent or authorization of the commission to any act in such other business or to make any report in respect thereof. But this subdivision shall not restrict or limit the powers of the commission in respect to the owning, operating, managing or controlling by such corporation of such gas plant or electric plant, and said powers shall include also the right to inquire as

to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such gas plant or electric plant as distinguished from such other business. In any such case if the owning, operating, managing or controlling of such gas plant or electric plant by any such corporation is wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character, the commission may by general rules exempt such corporation from making full reports and from the keeping of accounts as to such subsidiary and incidental business.

§ 67. Inspection of gas and electric meters. 1. Each commission shall appoint inspectors of gas meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat or power furnished by any person, corporation or municipality to or for the use of any person or persons and when found to be or made to be correct, the inspector shall seal all such meters and each of them with some suitable device, which device shall be recorded in the office of the secretary of state.

2. No corporation, person or municipality shall furnish, set or put in use any gas meter which shall not have been inspected, proved and sealed by an inspector of the commission.

3. Each commission shall appoint inspectors of electric meters whose duty it shall be, when required by the commission, to inspect, examine and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat or power by any person, corporation or municipality to or for the use of any person or corporation, and to inspect, examine and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters, and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the secretary of state. No corporation, person or municipality shall furnish, set or put in use any elec-

tric meter the type of which shall not have been approved by the commission.

4. Every gas corporation, electrical corporation and municipality shall provide, repair and maintain such suitable premises and apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

5. If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same on being so tested shall be found to be more than four per centum if an electric meter, or more than two per centum if a gas meter, defective or incorrect to the prejudice of the consumer, the expense of such inspection and test shall be borne by the corporation or municipality, if the same on being so tested shall be found to be correct within the limits of error prescribed by the provisions of this subdivision, the expense of such inspection and test shall be borne by the consumer.

6. The commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary, and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint.

§ 68. Approval of incorporation and franchises; certificate. No gas corporation or electrical corporation shall begin construction of a gas plant or electric plant without first having obtained the permission and approval of the commission of each district within which any part of the work of construction is to be performed. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the proper commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities. The commission within whose district such con-

struction is to be made, or within whose district such right, privilege or franchise is to be exercised, shall have power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.

No municipality shall build, maintain and operate for other than municipal purposes any works or systems for the manufacture and supplying of gas or electricity for lighting purposes without a certificate of authority granted by the commission. If the certificate of authority is refused, no further proceedings shall be taken by such municipality before the commission, but a new application may be made therefor after one year from the date of such refusal.

§ 69. Approval of issues of stock, bonds and other forms of indebtedness. A gas corporation or electrical corporation organized or existing, or hereafter incorporated, under or by virtue of the laws of the state of New York, may issue stocks, bonds, notes, or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its plant or distributing system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the corporation not secured or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation, within five years next prior to the filing of an application with the proper commission for the required authorization, for any of the aforesaid purposes except maintenance of service and except replacements in cases where the applicant shall have kept its accounts and vouchers of such expenditure in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made; provided and not otherwise that there shall have been secured from the proper commission an order authorizing such issue, and the amount thereof, and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the

money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes and other evidence of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expenses or to income. Nothing herein contained shall prohibit the commission from giving its consent to the issue of bonds, notes or other evidence of indebtedness for the reimbursement of moneys heretofore actually expended from income for any of the aforesaid purposes, except maintenance of service and replacements, prior to five years next preceding the filing of an application therefor, if in the judgment of the commission such consent should be granted; provided application for such consent shall be made prior to January first, nineteen hundred and twelve. For the purpose of enabling it to determine whether it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. Such corporation shall not without the consent of the commission apply said issue or any proceeds thereof to any purpose not specified in such order. Such gas corporation or electrical corporation may issue notes, for proper corporate purposes and not in violation of any provision of this or of any other act, payable at periods of not more than twelve months without such consent; but no such notes shall, in whole or in part, directly or indirectly be refunded by any issue of stock or bonds or by any evidence of indebtedness running for more than twelve months without the consent of the proper commission. Provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right. Nor shall the capital stock of a corporation formed by the merger or consolidation of two or more other corporations, exceed the sum of

the capital stock of the corporations, so consolidated, at the par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger.

§ 69-a. **Reorganizations.** 1. Reorganizations of gas corporations and electrical corporations pursuant to sections nine and ten of the stock corporation law and such other statutes as may be enacted from time to time shall be subject to the supervision and control of the proper commission, and no such reorganization shall be had without the authorization of such commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which, in making its determination shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash, provided, however, that the commission may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission.

[Added by ch. 289, L. 1912.]

§ 70. **Approval of transfer of franchise.** No gas corporation or electrical corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the proper commission. The permission and approval of the commission, to the exercise of a franchise under section sixty-eight of this chapter, or to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. No such corporation shall directly or indirectly acquire the stock or bonds of any other

corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality, neither shall any street railroad corporation acquire the stock or bonds of any electrical corporation, unless authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission empowered by this chapter to give such consent, no stock corporation of any description, domestic or foreign, other than a gas corporation or electrical corporation or street railroad corporation, shall purchase or acquire, take or hold, more than ten per centum of the total capital stock issued by any gas corporation or electrical corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation or electrical corporation may with the consent of the commission acquire and hold the remainder of the capital stock of such gas corporation or electrical corporation or any portion thereof. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired, or to prevent, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such gas corporation, or electrical corporation, or shall be recognized as effective for any purpose.

[Thus amended by ch. 788, L. 1911.]

§ 71. Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints. Upon the complaint in writing of the mayor of a city, the trustee of a village or the town board of a town in which a person or corporation is authorized to manufacture, sell or supply gas or electricity for heat, light or power, or upon the complaint in

writing of not less than one hundred customers or purchasers of such gas or electricity in cities of the first or second class, or of not less than fifty in cities of the third class, or of not less than twenty-five elsewhere, or upon complaint of a gas corporation or electrical corporation supplying said gas or electricity, as to the illuminating power, purity, pressure or price of gas, the efficiency of the electric incandescent lamp supply, the voltage of the current supplied for light, heat or power, or price of electricity sold and delivered in such municipality, the proper commission shall investigate as to the cause for such complaint. When such complaint is made, the commission may, by its agents, examiners and inspectors, inspect the works, system, plant, devices, appliances and methods used by such person or corporation in manufacturing, transmitting and supplying such gas or electricity, and may examine or cause to be examined the books and papers of such person or corporation pertaining to the manufacture, sale, transmitting and supplying of such gas or electricity. The form and contents of complaints made as provided in this section shall be prescribed by the commission. Such complaints shall be signed by the officers, or by the customers, purchasers or subscribers making them, who must add to their signatures their places of residence, by streets and number, if any.

§ 72. Notice and hearing; order fixing price of gas or electricity, or requiring improvement. Before proceeding under a complaint presented as provided in section seventy-one, the commission shall cause notice of such complaint, and the purpose thereof, to be served upon the person or corporation affected thereby. Such person or corporation shall have an opportunity to be heard in respect to the matters complained of at a time and place to be specified in such notice. An investigation may be instituted by the commission as to any matter of which complaint may be made, as provided in section seventy-one of this chapter, or to enable it to ascertain the facts requisite to the exercise of any power conferred upon it. After a hearing and after such an investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas or electricity not exceeding that fixed by statute to be charged by such corporation or person, for the service to be

furnished; and may order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the methods employed by such person or corporation, as will in its judgment be adequate, just and reasonable. The price fixed by the commission under this section or under subdivision five of section sixty-six shall be the maximum price to be charged by such person, corporation or municipality for gas or electricity for the service to be furnished within the territory and for a period to be fixed by the commission in the order, not exceeding three years except in the case of a sliding scale, and thereafter until the commission shall, upon its own motion or upon the complaint of any corporation, person or municipality interested, fix a higher or lower maximum price of gas or electricity to be thereafter charged. In determining the price to be charged for gas or electricity the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

§ 73. **Forfeiture for noncompliance with order.** Every gas corporation and electrical corporation and the officers, agents and employees thereof shall obey, observe and comply with every order made by the commission under authority of this chapter so long as the same shall be and remain in force. Any such person or corporation, or any officer, agent or employee thereof, who knowingly fails or neglects to obey or comply with such order, or any provision of this chapter, shall forfeit to the state of New York not to exceed the sum of one thousand dollars for each offense. Every distinct violation of any such order or of this chapter shall be a separate and distinct offense, and in case of a continuing violation each day shall be deemed a separate and distinct offense.

§ 74. **Summary proceedings.** Whenever either commission shall be of opinion that a gas corporation, electrical corporation or municipality within its jurisdiction is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission or is doing anything or about to do

anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the commission, it shall direct counsel to the commission to commence an action or proceeding in the supreme court of the state of New York in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. Counsel to the commission shall thereupon begin such action or proceeding by a petition to the supreme court alleging the violation complained of and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify the time not exceeding twenty days after service of a copy of the petition within which the gas corporation, electrical corporation or municipality complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirement. Such other persons or corporations, as it shall seem to the court necessary or proper to join as parties in order to make its order, judgment or writs effective, may be joined as parties upon application of counsel to the commission. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a writ of mandamus or an injunction or both issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

§ 75. **Defense in case of excessive charges for gas or electricity.** If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity, that a price has been demanded in excess of that fixed by the commission or by statute in the municipality wherein the action arose, no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action.

§ 76. **Jurisdiction.** The words "proper commission," when used in this article, mean the commission of the district within which the person or corporation affected supplies or proposes to supply the whole or the greater part of the service rendered by it. But nothing herein contained shall be construed to

deprive the commission of either district of the power of supervision and regulation within its district. And either commission shall have power to enter and inspect the plant of such corporation, wherever situated.

§ 77. **Powers of local officers.** If in any city of the first or second class there now exists or shall hereafter be created a board, body or officer having jurisdiction of matters pertaining to gas or electric service, such board, body or officer shall have and may exercise such power, jurisdiction and authority in enforcing the laws of the state and the orders, rules and regulations of the commission as may be prescribed by statute or by the commission.

ARTICLE IV-A.

PROVISIONS RELATING TO STEAM CORPORATIONS; REGULATING PRICE OF STEAM.

§ 78. **Application of article.** * * *

§ 79. **Adequate service; just and reasonable charges; unjust discrimination and unreasonable preference.** * * *

§ 80. **General powers of commissions in respect to steam heating.** * * *

§ 81. **Approval of incorporation and franchises; certificate.** * * *

§ 82. **Approval of issues of stock, bonds and other forms of indebtedness.** * * *

§ 82a. **(Reorganizations subject to commissions.)** * * *

§ 83. **Approval of transfer of franchise.** * * *

§ 84. **Complaints as to service and price of steam heat; investigation by commission; forms of complaints.** * * *

§ 85. **Notice and hearing; order fixing price of steam, or requiring improvement.** * * *

§ 86. **Forfeiture for noncompliance with order.** * * *

§ 87. **Summary proceedings.** * * *

§ 88. **Defense in case of excessive charges for steam heat.** * * *

§ 89. **Powers of local officers.** * * *

§ 89-a. **Jurisdiction.** *...*...*

ARTICLE V.

PROVISIONS RELATING TO TELEGRAPH AND
TELEPHONE LINES AND TO TELEPHONE
AND TELEGRAPH CORPORATIONS.

- § 90. Application of article. * * *
- § 91. Adequate service; just and reasonable charges; unjust discrimination; unreasonable preference. * * *
- § 92. Rate schedules. * * *
- § 93. Liability for loss or damage caused by violation of this chapter. * * *
- § 94. General powers and duties of commission in respect to telegraph corporations and telephone corporations. * * *
- § 95. Reports of telegraph corporations and telephone corporations. * * *
- § 96. Investigations by commission. * * *
- § 97. Rates, rentals and service. * * *
- § 98. Power of commission to order repairs or changes.
* * *
- § 99. Franchises and privileges. * * *
- § 100. Transfer and ownership of stock. * * *
- § 101. Approval of issues of stocks, bonds and other forms of indebtedness. * * *
- § 101-a. Reorganization. * * *
- § 102. Forfeiture; penalties. * * *
- § 103. Summary proceedings. * * *

ARTICLE VI.

COMMISSIONS AND OFFICES ABOLISHED; SAVING CLAUSE;
REPEAL.

- SECTION 120.** Board of railroad commissioners abolished; effect thereof.
121. Commission of gas and electricity abolished; effect thereof.
122. Inspector of gas meters abolished; effect thereof.
123. Board of rapid transit railroad commissioners abolished; effect thereof.
124. Transfer of records.
125. Pending actions and proceedings.
126. Construction.
127. Repeal.

§ 120. Board of railroad commissioners abolished; effect thereof.

§ 121. Commission of gas and electricity abolished; effect thereof. On and after July first, nineteen hundred and seven, the commission of gas and electricity shall be abolished. All the powers and duties of such commission conferred and imposed by any statute of this state shall be exercised and performed by the public service commissions.

§ 122. Inspector of gas meters abolished; effect thereof.

§ 123. Board of rapid transit railroad commissioners abolished; effect thereof.

§ 124. Transfer of records.

§ 125. Pending actions and proceedings.

§ 126. Construction. Wherever the terms board of railroad commissioners, or commission of gas and electricity or inspector of gas meters or board of rapid transit railroad commissioners occur in any law, contract or document or whenever in any law, contract or document reference is made to such boards, commission or inspector, such terms or reference shall be deemed to refer to and include the public service commissions as established by this chapter, so far as such law, contract or document pertains to matters which are within the jurisdiction of the said public service commissions.

NEW YORK TRANSPORTATION CORPORATIONS LAW

L. 1909, Ch. 219.

§62. Gas and Electric Light Must be Supplied on Application. Upon the application, in writing, of the owner or occupant of any building or premises within one hundred feet of any main laid down by any gas light corporation, or the wires of any electric light corporation, and payment by him of all money due from him to the corporation, the corporation shall supply gas or electric light as may be required for lighting such building or premises, notwithstanding there be rent or compensation in arrears for gas or electric light supplied, or for meter, wire, pipe or fittings, furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed with the former occupant to pay or to exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if for the space of ten days after such application, and the deposit of a reasonable sum as provided in the next section, if required, the corporation shall refuse or neglect to supply gas or electric light as required, such corporation shall forfeit and pay to the applicant the sum of ten dollars, and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; provided that no such corporation shall be required to lay service pipes or wires for the purpose of supplying gas or electric light to any applicant where the ground in which such pipe or wire is required to be laid shall be frozen, or shall otherwise present serious obstacles to laying the same; nor unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay the cost of his portion of the pipe or wire required to be laid, and the expense of laying such portion.

Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1925

CALENDAR No. 33

THE PEOPLE OF THE STATE OF NEW YORK on the
relation of THE WOODHAVEN GAS LIGHT COMPANY,
Plaintiff in Error,
vs.

THE PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

REPLY ON BEHALF OF PLAINTIFF IN ERROR
TO BRIEF OF DEFENDANT IN ERROR.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925

CALENDAR No. 33

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

against

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
NEW YORK.

REPLY BRIEF ON BEHALF OF PLAINTIFF-IN-ERROR.

POINT I.

Cost of Gas.

Counsel for the Commission in his "Statement of Case", concedes that the Company's income in 1919 was \$1,799.93 on a valuation by the Commission of \$580,527

but asserts "that small income was largely due to the action of the Brooklyn Union Gas Company in increasing the price for gas supplied to the plaintiff-in-error from 50¢ to 65¢ per M. cubic feet (R., 172-3)" and further that "in the same year the Brooklyn Union Gas Company also increased the rate of interest charged on its open account with the plaintiff-in-error from 3 per cent. to 6 per cent." (Brief, pp. 3, 4).

Until January 1, 1919 the Company paid the pre-war price for its gas. Uncontradicted evidence from a witness who was not even cross-examined shows that thereafter instead of increasing the price for gas fifteen cents it might reasonably have been increased twenty-three and a fraction.

Exhibit 18 (R., 291) is as follows:

"THE WOODHAVEN GAS LIGHT COMPANY
First Five Months—Year 1919

Cost of gas allowed by Commissioner Hayward in 1916 as a fair rate for gas supplied in the Fourth Ward Companies:

Cost	\$.4400
Transmission losses .....	.0400
Total cost	\$.4800 ✓

Increases in cost per M cubic feet of gas manufactured:

Coal and coke.....	\$.0603
Oil .....	.1544
Labor .....	.0191
	<hr/>
	.2338
	<hr/>
	\$.7138

Distribution (Commissioner Hayward) ..	.3200
Fair return on property used (Commissioner Hayward) .....	.1300
	<hr/>

\$1.1638"

It was prepared and introduced by Mr. Bush, who testified that he had taken the amount found by defendant-in-error in 1916 as a fair price for this company to pay for gas and added to it the increased cost since that time of coal, oil and labor (R., 185).

The exhibit was received without objection (R., 185). The witness was not cross-examined. No testimony was introduced to meet his evidence.

It is therefore conceded by acquiescence that the reasonable price for plaintiff-in-error to pay for gas was 71.38 cents per thousand.

Ohio Utilities Co. v. Commission, 267 U. S. 359

So much for the increased cost of gas which on the record is concededly reasonable.

Counsel for the Commission also alludes to an increase in the rate of interest charged on an open account with the Brooklyn Union Gas Company. It is a sufficient answer that in calculating the income of \$1,799.93 the interest charge is not deducted (Ex. 35; R., 366) and that deducting interest there was a net corporate loss of \$7,833.89 (R., 336).

In the year 1919 the Company bought 426,346,247 cubic feet of gas at 65 cents per thousand cubic feet or \$277,125.06 (R., 341). If it had paid the concededly reasonable price of 71.38 cents per thousand cubic feet (Exhibit 18) instead of a nominal income of \$1,799.93 it would, irrespective of any interest charge, have suffered a net corporate loss of \$35,034.79.

*

POINT II.

A Real Controversy Exists.

Counsel for the Commission asserts there is no controversy between the parties and therefore the writ of error should be dismissed.

The map in evidence (Exhibit 23, Sheet No. 2) shows that an extension has been ordered to Springfield and Laurelton. The other localities, Locust Manor, Locust Lawn and South Jamaica Place, are incidental and enroute. Since November 17, 1922, when the writ of certiorari was dismissed by the Appellate Division (R., 344), the Commission has been at liberty to enforce its order by a summary proceeding under Section 74 of the Public Service Commission Law, which provides:

“Whenever the Commission shall be of opinion that a gas corporation * * * is failing or omitting or about to fail or omit to do anything required by law or by an order of the Commission * * * it shall direct counsel to the Commission to commence an action or proceeding in the Supreme Court of the State of New York in the name of the Commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. Counsel to the Commission shall thereupon begin such action or proceeding by a petition to the Supreme Court alleging the violation complained of and praying for appropriate relief by way of mandamus or injunction. * * * In case of default in answer or after answer, the Court shall immediately inquire into the facts and circumstances and in such manner as the Court shall direct without other or formal pleadings, and without respect to any technical requirement * * *. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a writ of mandamus

or an injunction or both issue as prayed for in the petition or in such modified or other form as the Court may determine will afford appropriate relief."

L. 1910, ch. 480, as amended by L. 1921, ch. 134.

Counsel for the Commission now argues:

"Since the writ of error was issued herein the gas company has constructed about *thirty* (30) miles of mains through the territory south and east of Jamaica, although the Commission's order directing the extension required the construction of a little over sixteen (16) miles.

The real question in issue was whether the gas company should extend its mains so as to serve the inhabitants of Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton. As the gas company has extended the mains to Locust Manor and Locust Lawn and is actually serving those two sections, it is obvious that as to them 'an affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other' (*Brownlow v. Schwartz*, 261 U. S., 216 at 217). With respect to the three other communities it will no doubt be admitted that the gas company is going to continue its construction program for the area in question, and to proceed diligently to extend the mains so as to serve those sections within a reasonable time. So that at the present time there is no actual controversy, involving real and substantial rights.

Where no such controversy exists it has been held repeatedly that the case will be dismissed" (Italics in original.) (Brief, p. 6).

It would be interesting and perhaps conclusive to learn whose judgment is to be taken as to the "reasonable time." Apparently, Counsel for the Commission

asks that the writ of error shall be dismissed, the order remain effective and the Commission be at liberty to determine what time is reasonable. If the Commission means that the Company shall proceed with the extension when, in its judgment, the reasonable time arrives, there is no method to achieve this result save by reversal or a vacating of the order.

The controversy is as real as ever in respect of South Jamaica Place, Springfield and Laurelton. The Company has not obeyed the order there and will not unless it shall be affirmed.

It is true and is admitted that "within a *reasonable time*" mains will be extended to these localities, the greatest and remotest being Springfield. That "the gas mains have been constructed by the plaintiff-in-error to and through those communities within the past fifteen (15) months as part of an *existing plan* to give gas service to the so-called Springfield area", (Brief, p. 5), is emphatically denied.

The Commission concedes that the "reasonable time" will be a future time. It follows that this order made in 1920 was unreasonable.

If this argument means anything it is that the Commission will not enforce its order by the summary proceeding authorized by the statute (p. 4, *supra*). No evidence of unreasonableness could be more conclusive than this statement of the Commission.

Counsel for the Commission makes much of the laying of mains outside the area covered by the order. Such mains have been laid and others will doubtless be laid all in reasonable time. This is no reason for forcing the Company at once into the lean territory of the three localities in the order.

We have no order or binding declaration of the Commission that it will remain content with the judgment of the Company as to a reasonable time but only the mo-

tion of counsel to dismiss based on his conclusion that the history of the Company shows that in the near future when it becomes reasonable the Company will extend.

As well might a judgment creditor answer the appeal of his debtor by profession of faith that in due time, perhaps in better times, the debtor would pay the judgment.

Or take the case of a respondent on an appeal from a judgment for the specific performance of a contract to open a right of way for him through a neighboring farm. Would the appeal be dismissed because the appellant had opened the way through one field for his own purposes and the respondent professed a belief that in the future the appellant would open the remainder.

The motion is an admission that the order was unreasonable in 1920, when it was made. The ground is that in the future, when reasonable, the Company will make the extension without compulsion of the order.

POINT III.

Property and operating results in 1918 and 1919.

Under this subheading of his Point III, Counsel for the Commission tells how its engineer Mr. Mitchell arrived at a figure of \$580,527 for what he called "normal reproduction value". It was an attempt to reach the so-called "historical cost".

It is based upon a valuation by an engineer named Hine in 1916 and is in no sense the work of Mr. Mitchell (R., 265).

Adopting \$580,527 as the value of the Company's property, Counsel for the Commission (p. 39) writes:

"As that appraisal figure of \$580,527 represented the value of the company's property at the

end of 1919, it is a fair inference that the company's property was worth less in 1918. But even assuming that in the latter year it had a value of \$580,527,—as its operating income was then \$37,999.19,—it enjoyed a return of 6.54 per cent. Upon the assumption that 500 houses in the five communities would have taken gas and thus added \$1,270 to the operating income of \$37,999.19, and that the extension had been constructed at a cost of \$170,000 (which assumptions were accepted by the counsel for plaintiff in error before the Court of Appeals for the purpose of argument), the value of the property would have been increased to \$750,527 (\$580,527 plus \$170,000) with a resultant return of 5.23 per cent.

According to its 1918 annual report, the company's fixed capital, *undepreciated*, was \$584,697.88 and its floating capital \$75,894.08, making a grand total of \$660,591.96 (Exhibit 34, R., 310). As it reported for the same year that its operating income applicable to its corporate property for the payment of dividends or interest on bonds was \$37,999.19, which was an increase in such income of \$13,415.35 over the preceding year (Exhibit 34), there was thus a net return of 5.75 per cent. on its undepreciated book value of \$660,591.06.

The company showed by Exhibit 15 (R., 286) that even if it had served 982 additional consumers throughout the *fifteen* communities in 1918, an operating income of \$26,872.07 would have remained, or a return of 4.07 per cent., upon said book value.

It is respectfully submitted that the returns indicated above on either the Commission's estimate or the Company's own book value in the last year of the World War can hardly justify any complaint as to the plaintiff's-in-error operating results in 1918, especially in view of what this Court said in *Milwaukee Electric P. & L. Co. vs. Milwaukee*, 252 U. S. 100, 105, quoted under the next point."

The "basic figure, Mr. Hine's appraisal of the company's physical property as of December 31, 1913" (p. 39) is what the witness Mitchell and his predecessor Hine called "normal reproduction value".

The status of Mr. Hine's "normal reproduction value" in the opinion of this Commission and the courts of New York is shown by the Appellate Division of the Supreme Court, Third Dept., in the recent case of *The People of the State of New York ex rel. People's Gas & Electric Company of Oswego, relator, vs. Public Service Commission of the State of New York and the City of Oswego, respondents*, decided September 12, 1925 and unreported. Presiding Justice Cochrane for the court writes as follows:

"It is now too well established to admit of discussion that a public utility is entitled to a reasonable return on the value of its property used in the public service at the time of the inquiry (citations). In determining the value of the property due weight must be given to its cost of reproduction and any determination which fails to properly appraise such reproduction cost is erroneous (citations). These principles the commission recognized but has failed to apply. * * * Both the relator and the city introduced expert testimony as to the value of the property. Mr. Cheney for the relator gave an estimate of its original cost and also of its reproduction cost less depreciation. The city relied on the testimony of Mr. Hine who seems to have been competent to express an opinion as to the value of the property. The city, however, did not attempt to controvert the testimony as to reproduction cost as given by Mr. Cheney. Instead thereof Mr. Hine followed a certain method of what he called 'normal reproduction cost'. This testimony was properly described by the Commission as follows: '*Mr. Hine's normal reproduction cost is rather a misleading term. What he intends by that term is cost of the first installation and the cost of additions to the plant*

+ ||| as required by growth of business at prudent and reasonable prices. It is not a reproduction of the plant as at the present time but a reproduction as it has grown from its first installation at prices and costs prevailing at the time extensions and additions were made. It does not materially differ from Mr. Cheney's original cost except as to related overheads.' * * * The city's expert witness was competent to express an opinion as to reproduction cost had he desired to do so. Instead thereof by means of *some vague theory called 'normal reproduction'* which the Commission itself has properly described as substantially only original cost he designedly or otherwise evaded the issue. The difficulty is that the city permitted this branch of the case to go by default. We are, therefore, justified in concluding that the evidence of the relator on this branch of the case is substantially correct and the authorities cited require us to hold that it is of dominating importance in the absence of evidence destroying or substantially weakening its effect. We think there was clearly an obvious error on the part of the Commission in its failure to give due weight to the uncontradicted evidence of reproduction cost." (Italics supplied.)

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Mr. Mitchell's testimony shows that his estimate of \$580,527 is exactly the "normal reproduction cost" discredited both by the Public Service Commission and the court in the *Oswego* case *supra*. He testified:

"Q. Do you make any distinction then in the words between normal reproduction cost and physical property? A. No, it is the normal reproduction cost of a physical element in the total value.

Q. Now, what do you mean by normal? A. By normal, I mean reproduction on the basis of an average for normal figures, taking into consideration the prices of labor and material existing at the time the construction work was performed

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and the general conditions existing as to the way the construction work was performed by the company.

Q. Well, you say the average of what; how do you get your average? A. Why, the average in the case of prices that fluctuate to determine an average you would necessarily have to construe—to consider the fluctuations existing over the years during which the property was constructed and the relative amounts of construction work performed in the various years, as represented by the particular property in place today.

Q. Then to get that so-called normal rate reproduction cost, would you strike an average by taking all the years during which the company had been in existence? A. I would weigh up in proportion the amount of construction work performed. I might say right here that I am not defining—I am not defining my ideas of normal reproduction cost in answer to your question. I am not—

Q. That is what I want you to do. A. I am not defining the value of \$438,635 which was a finding of the commission.

Q. Now, my understanding of course, so far as we have that figure is that it is merely the opinion of Mr. Hine; you speak of it as a finding of the commission. But so far it is the opinion of Mr. Hine; his exhibit? A. And his testimony of course is a matter of record.

Q. His testimony is a matter of record, yes. Now, you have accepted Mr. Hine's figures? A. Yes, sir.

Q. And you told me by 'normal reproduction cost' you mean an average over all the years during which the Woodhaven Gas Light Company has been in existence? A. That is what I would testify to in taking the—when you asked the normal value I so considered it.

Q. Exactly. Now, do you know whether that was Mr. Hine's opinion? A. No; I can give you Mr. Hine's testimony.

Q. Do you know whether it is or not? I do not want to try that case all over again. Do you know whether that was the theory upon which Mr. Hine proceeded in arriving at those figures? A. As near as I can absolutely say, the figure represented here, as prepared by Mr. Hine, represents the reproduction cost of the normal or average prices, and his testimony on that point, at the time that he appraised, he used those prices which did not fluctuate. He took the prices then prevailing for those items of property which did not seem to fluctuate. But those figures, those prices which did fluctuate, he took the 5 year average price.

Q. Well, the Woodhaven Gas Light Company has been in business more than 5 years. A. Well, those 5 years were taken as a representative 5 years. As I recall—of course, I am testifying from hearsay purely—but my recollection of the situation was—

Deputy Commissioner Glennon: Hearsay as to his testimony?

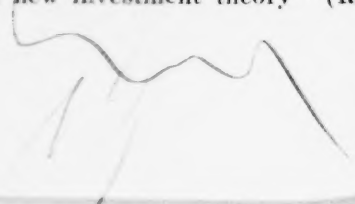
The Witness: Yes.

Mr. Dykman: It is purer here than anywhere else.

The Witness: I can well say the proceeding of the commission, which had been materially changed—I shall take it upon myself, the weight of testifying, having performed 12 years of service in this commission in many proceedings, rate proceedings.

Mr. Dykman: I know that.

The Witness: The policy of the commission in proceedings at that time, the basic proceeding of the engineers, accountants, lawyers, was on the basis of normal reproduction, considering the average normal prices; rather the reproduction on the basis of average or normal figures to get the original cost theory. That is the general trend of the commission's proceedings, or you might call it the new investment theory" (R., 264, 265).



As shown by the quotation from the Commission in the opinion in the Oswego case, *supra*, this defendant in error now considers "Mr. Hine's normal reproduction cost is rather a misleading term." The commission seems to have discarded "normal reproduction" generally but in this case it is still relying upon what it now concedes is not present value.

All the calculations of rate of return set out by Counsel for the Commission on pages 39 and 40 of his brief are based on operations for the year 1918 when concededly and upon the Commission's own allowances (Exhibit 18) this company was paying 23.38 cents too little for its gas. Had it paid in 1918 anything approaching a reasonable price for gas there would have been no return in that year. Exhibit 15 (R., 286) upon which Counsel for the Commission relies for his statement that with 982 additional consumers there would have been an operating income of \$26,872.07 also proves that had 65 cents per 1000 cubic feet been paid for gas in 1918 there would have been a loss of \$24,124.75 and at that price the company would not yet have been paying within 8 cents of the reasonable price for gas.

POINT IV.

The Company's Duty to the Public.

In 1871 this Company received a franchise to lay conductors and sell gas in what is now the Fourth Ward of Queens (R., 282). Its duty was not then defined by statute.

The Act of 1848 under which the Company was organized (Ex. 1; R., 279) provided in part as follows:

"§18. Any corporation formed under this Act shall have full power to manufacture and sell, and

to furnish such quantities of gas as may be required in the city, town or village where the same shall be located, for lighting the streets, and public and private buildings, or for other purposes; and such corporation shall have power to lay conductors for conducting gas through the streets, lanes, alleys and squares, in such city, village or town, with the consent of the municipal authorities in said city, village or town and under such reasonable regulations as they may prescribe; and the said municipal authorities shall have power to exempt any corporation formed under the provisions of this Act, from taxation on their personal property, for a period not exceeding three years from the organization of said corporation."

Chapter 37, Laws of 1848.

The franchise reads (R., 282):

"Franchise of the Woodhaven Gas Light Company

We, the undersigned, Supervisor, Town Clerk, Justices of the Peace, and Commissioners of Highways of the Town of Jamaica, in the County of Queens and State of New York, do hereby consent, that the Woodhaven Gas Light Company may have the power and the same is hereby conferred upon and granted to them, of laying conductors for conducting gas in and through the public streets and highways of said Town of Jamaica, and we do hereby exempt the said Woodhaven Gas Light Company from taxation on their personal property for the period of three years from the organization of said Company.

Dated, Jamaica, Oct. 4, 1871."

Thus both the statute and the franchise simply authorise the company, without requiring it, to lay conductors for conducting gas through the public streets. This Court has held that "if the charter of a railroad corporation simply authorises the corporation, without requiring it, to construct and maintain a railroad to a

certain point, it has been held that it cannot be compelled by mandamus to complete or maintain its road to that point, when it would not be remunerative."

Northern Pacific Railroad v. Dustin, 142 U. S. 492, 499.

Such is also the law of New York.

People v. N. Y., L. E. & W. R. R. Co., 104 N. Y. 58.

Such was the common law duty of this company. It is now defined by two statutes.

The first (Transportation Corp. Law, §62) requires it on written application to serve occupants of premises within one hundred feet of an existing main. This is an absolute duty requiring no intervention of the Commission and for the breach of which a penalty is imposed.

The second (Public Serv. Comm. Law, §66) vests the regulatory body with power to order *reasonable* extensions and thus defines the duty of the corporation.

Its duty is measured by Section 66 of the Public Service Commission's Law. An order not authorized by it is void (Sec. 23). It is the whole duty of the company to make *reasonable* extensions. The Commission can order no more. Counsel for the Commission, as we have seen, stated this rule in opening the case to the Commission (R., 16).

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x / "The Public Service Law provides that the Commission has the power to order *reasonable extensions* of gas mains, so that the question at this time is whether or not, (on) *the facts which may be presented to you*, will it be *reasonable* for the Commission to order the extension of the gas mains, which is a question that the Commission must of necessity pass upon by testimony which is produced, although the Commission is glad to

get the views of interested parties" (R., 16).
(Italics supplied.)

So Mr. Goldmark, who led for the Commission in *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, stated the question before the Commission in his opening in this case.

Concededly the expenditure ordered is beyond the financial ability of the Woodhaven Company. The stockholder, Brooklyn Union Company, was excluded from the case by the Commission (R., 197). The question is whether this order which will increase existing confiscation is reasonable. The statute law of New York, the Public Service Commission Law, gives the complete negative answer.

Counsel for the Commission quotes from *Lukrawka v. Spring Valley Water Co.*, 169 Cal. 318, (Brief, p. 46):

"It was for the benefit of the public that the franchise was extended to secure to the municipality of the city and county of San Francisco and its inhabitants an adequate supply of water as the *reasonable* and necessary wants of the community in that respect might require. This was the purpose and this the condition upon which the franchise was offered, and when it was accepted by the respondent it constituted a contract between the state and the respondent under which the rights, duties, and responsibilities of each were fixed, and by which they were bound." (Italics supplied.)

Reading the law and the franchise we find the contract of this Gas Company with the public authorities to be to make *reasonable* extensions.

Counsel further quotes:

"The proper discharge of this public duty required not only that the company should provide a supply of water and establish a system for its

distribution to meet the *reasonable* needs of the municipal community as it then existed, but it was under the obligation to keep in view the prospective and probable increase in population of the municipality and the necessarily increased demand for a water supply which would be consequent therefrom; to anticipate the natural growth of the municipality it had undertaken to serve as a whole, and to take *reasonable* measures to have under its control a sufficient supply of water and make gradual extensions of its distributive system to meet the *reasonable* demands for water by the growing community." (Italics supplied.)

Counsel for the Commission quotes from *People, etc. v. Deehan*, 153 N. Y. 528, (Brief, pp. 44, 45) in which this Company had a mandamus to the street commissioner of the village of Richmond Hill for a permit to lay mains in Broadway, a street in that village. The franchise of the Company was granted by the authorities of the town in 1871. In 1894 a portion of the town was incorporated into the village of Richmond Hill. Thereafter Broadway was opened in the village.

Richmond Hill is now served by the Richmond Hill Company under a village consent and there are two franchises for the same territory. Surely an order of the Commission to invade the territory of Richmond Hill Company could be resisted as unreasonable. The mere fact that a company has a franchise cannot alone justify an order to extend.

Broadway in Richmond Hill which was the subject of the controversy in the case cited was not opened in 1871 when plaintiff in error received its franchise. The localities named in the order now under review in this cause were then farm lands. The question arises of the duty of the Gas Company when a new highway is opened. When must the Company extend its mains? The statute answers: When it is reasonable.

X / We do not argue that the money return is the sole factor; there are several. We argue that any factor may be dominant and that when there is a mere nominal return, when the Company is in fact losing money and accumulating a deficit it is idle to order it to borrow new money and pledge its property when a deficit is certain. That we argue is unreasonable.

Counsel for the Commission cites *Russell v. Sebastian*, 233 U. S., 195 (Brief, p. 45). We quote (p. 208):

“This construction of the constitutional provision is the only one that is compatible with the existence of the duty which it was intended, as it seems to us, that the recipient of the State’s grant should assume. The service, as has been said, was a community service. Incident to the undertaking in response to the State’s offer was the obligation to provide facilities that were *reasonably adequate*. *Lumbard v. Stearns*, 4 Cush. 60; *Cumberland Tel. Co. v. Kelly*, 160 Fed. Rep. 316, 324; *Atlantic Coast Line R. R. Co. v. North Carolina Corp. Com’n*, 206 U. S., 1, 27; *People ex rel. Woodhaven Gas Co. v. Deehan*, 153 N. Y. 528, 533; *Morawetz on Corporations*, §1129. It would not be said that either a water company or a gas company, establishing its service under the constitutional grant, could stop its mains at its pleasure and withhold its supply by refusing to extend its distributing conduits so as to meet the *reasonable requirements* of the community. But this duty and the right to serve, embracing the right under the granted privilege to install the means of service, were correlative.” (Italics supplied.)

In *Mo. Pac. Ry. Co. v. Kansas*, 216 U. S. 262, cited by defendant in error, (Brief, p. 49), the Kansas Railroad Commission ordered the Railroad Company to operate a passenger train where it had operated a freight train with a passenger car. This Court held that it was the duty of the Railroad Company to operate a passenger

train separate from a freight train. The Railroad Company in the State Court and this Court objected that the railroad in Kansas operated at a loss.

Mr. Justice WHITE wrote (p. 273):

“As to the first, although the duty of the company under its charter was referred to and authorities were cited, with evident approval, holding that the obligation to operate a separate passenger train service rested upon a railroad company in the fulfillment of the law of its being, the court did not expressly pass upon that aspect of the case, but held that as it did not plainly and obviously result upon the face of the findings and order made by the commission, that the service required would be rendered at a pecuniary loss, it could not in any event be said that the order was unreasonable on its face. As to the second, considering the inherent and prima facie reasonable nature of the service, the performance of which the order commanded, along with the findings of the referee and the evidence, it was held that the unreasonableness of the order had not been established, since, taking all the foregoing into account, it had not been affirmatively proven that any material pecuniary loss would be sustained from rendering the service in question.”

and again (p. 277),

“1. The alleged arbitrary and unreasonable character of the order.

In its principal aspect this contention is based on the insistence that the order and findings of the commission and the findings of the referee, when elucidated by the proper inferences of fact to be drawn from the evidence, show the service which the order commanded could not be rendered without a pecuniary loss. And this, it is insisted, is the case, not only because of the proof that pecuniary loss would be occasioned by performing the particular service ordered, considering alone the cost of that service and the return from its perform-

ance, but also because it is asserted the proof establishes that the earnings from all sources, not only of the branch road, but of all the roads operated by the Missouri Pacific in Kansas, produced no net revenue and left a deficit. It is at once evident that this contention challenges the correctness of the inferences of fact drawn by the court below. They therefore assume that we are not bound by the facts as found by the court below, but must give to the evidence an independent examination for the purpose of passing on the constitutional question presented for decision. But we do not think that *the case here presented* requires us to consider the issues of fact relied upon, even if it be conceded, for the sake of argument only, that on a writ of error to a state court, where a particular exertion of state power is assailed as confiscatory because ordering a service to be rendered for an inadequate return, the proof upon which the claim of confiscation depends would be open for our original consideration, as the essential and only means for properly performing our duty of independently ascertaining whether there had been, as alleged, a violation of the Constitution." (Italics supplied.)

In *Atlantic Coast Line v. N. Car. Corp.* Com'n, 206 U. S. 1, also cited by defendant-in-error, (Brief, p. 49), the Commission ordered an extra passenger train. The receipts were estimated at \$25 a day and the cost \$40, a daily loss of \$15. The state court held that the earnings in North Carolina were such that "an adequate remuneration would remain after allowing for any possible loss" from the service ordered.

Mr. Justice WHITE wrote (p. 24):

"But this case does not involve the enforcement by a State of a general scheme of maximum rates, but only whether an exercise of state authority to compel a carrier to perform a particular and specified duty is so inherently unjust and unreasonable as to amount to the deprivation of prop-

erty without due process of law or a denial of the equal protection of the laws. In a case involving the validity of an order enforcing a scheme of maximum rates of course the finding that the enforcement of such scheme will not produce an adequate return for the operation of the railroad, in and of itself demonstrates the unreasonableness of the order. Such, however, is not the case when the question is as to the validity of an order to do a particular act, the doing of which does not involve the question of the profitableness of the operation of the railroad as an entirety. The difference between the two cases is illustrated in *St. Louis &c. Ry. Co. v. Gill*, 156 U. S. 649, and *Minneapolis & St. Louis R. R. Co. v. Minnesota*, 186 U. S. 257. But even if the rule applicable to an entire rate scheme were to be here applied, as the findings made below as to the net earnings constrain us to conclude that adequate remuneration would result from the general operation of the rates in force, even allowing for any loss occasioned by the running of the extra train in question, it follows that the order would not be unreasonable, even if tested by the doctrine announced in *Smyth v. Ames* and kindred cases."

The present case comes exactly within the learned Justice's exception since it "does involve the profitableness of the operation of the company as an entirety." Just as this fact distinguishes the present case from *New York and Queens Co. v. McCall*, 245 U. S. 345, so it is distinguished from *Atlantic Coast Line v. N. Car. Corp. Com'n, supra*, by the fact that an existing deficit in earnings will be increased and operation as an entirety be rendered more confiscatory.

It is quite true that the cost of the extension is not the only matter for consideration. In *New York and Queens Gas Co. v. McCall*, 245 U. S. 345, the plaintiff in error sought to make it so and the statement of the Court of Appeals (219 N. Y. 25, p. 91) was in answer to that con-

tention. It matters little in the present case whether the extension would cost \$170,000 or \$271,574.71. What makes this order unreasonable and therefore invalid is the fact that it adds further confiscation to an existing deficit. This company is not seeking to pick and choose. It was already loaded with loss. What it seeks is to limit its loss to the fulfillment of existing obligations.

Counsel for the Commission cites *People ex rel. Richmond Light & Railroad Co. v. McCall*, 216 N. Y. 716, and states:

"In thus unanimously affirming the Commission's order, the courts must have held that the question of reasonableness is to be determined by comparing the burden imposed on the company with the benefit to be derived by the public and that the determination of the Commission would only be set aside if it was entirely clear that the Commission had erred in its interpretation of the law and not in a matter of judgment."

An examination of the opinion of the Commission and of the arguments of counsel for the Commission in the Court of Appeals will show that the analysis of the case by Counsel for the Commission here is wholly erroneous.

The opinion of the Public Service Commission in this case is quoted in full (*4 State Dept. Repts.*, N. Y. 61, 63):

"Cram, Commissioner.—The evidence on the rehearing shows that, with open cars during the summer season, the defendants are able to give a barely adequate service during the rush hours, and an adequate service during the rest of the day, by increasing the service during the rush hours to three sections on the arrival or departure of each boat.

Four or more sections cannot be operated on a single track without great and prohibitive delay at the switches; thus it appears that, with open cars during the summer season, the company is giving all the service that can be given with its present facilities.

When the summer season ends, no provision has been made either to improve, or to give adequate winter service; the inadequate winter service being the cause of the original complaint.

Unless the order on which a rehearing was ordered is affirmed, the service during the ensuing winter will be inadequate during the rush hours, particularly as the single track is laid with light rails, and the cars in use small and of an obsolete type.

I find no reason in the evidence to change the report that to maintain an adequate service on the Castleton Avenue branch of the defendant's company, the line must be double-tracked, where not already done; and I further find that there is no obstacle either in the width of the street, or from the vehicular traffic to the double-tracking that has been ordered."

The auditor of the company estimated its property at \$4,619,723.96. The cost of double-tracking was estimated at \$52,724, one and one-quarter per cent of the value of the property. We quote from the brief in the Court of Appeals of Counsel for the Public Service Commission (p. 24):

"There is no evidence in the case to show how much of the property covered by the mortgage is devoted to railroad uses and how much to lighting although counsel for the relator at one time stated (fol. 247) that one-third of the cost of construction represented railway cost, while at other times he shows one-half as representing railway cost and one-half lighting cost (502, 503). *The total revenue from its entire business is not disclosed.*" (Italics supplied.)

We quote again from the brief in the Court of Appeals of the Counsel of the Public Service Commission (p. 26):

"An order of the Commission absolutely unwarranted and calling for oppressive and un-

necessary expenditure of money might constitute the taking of property without due process of law. If the earnings of the company throw light upon the amount of travel upon relator's line they may have probative force in establishing the need of the improvement ordered. However, only the earnings of the lines affected by the order can have any such weight and the record in this case conclusively proves that the Castletone Avenue Line is profitable. Commission's Exhibit 21 (fol. 1447) shows actual receipts on this line for the year ending June 30, 1912 of \$59,838.82 and estimated expenses *and interest deductions* based on proportionate car miles operated, deductions, of \$53,603.50, leaving a net revenue, after deducting estimated proportion of all interest charges, of \$6,235.32. Surely there is nothing in these figures to warrant the claim that the order of the Commission is oppressive or confiscatory." (Italics supplied.)

And again (Brief in Ct. of Appeals, p. 27):

"The cases cited on pages 14 and 15 of the relator's brief in the Court below might have more weight if we were construing an order directing the relator to extend its operations in a foreign field where it owes no present duty to the public; but the present order was made to compel relator to do properly what it was doing improperly."

POINT V.

Plaintiff-in-error and The Brooklyn Union Gas Company.

The alleged identity between plaintiff-in-error and The Brooklyn Union Gas Company is treated in our main brief commencing on page 12. Counsel for the commission, in support of his Point V on this subject, cites a number of cases.

The cases of *Chicago, M. & St. P. Ry. Co. vs. Minn. Civic Ass'n.*, 247 U. S. 490 and *U. S. vs. Lehigh Valley R. R. Co.*, 220 U. S. 255 have all been distinguished on page 17 of our main brief by the fact that in the former both parents of a subsidiary were parties and in the latter all companies were joined as parties.

United States v. Delaware, Lackawanna & Western R. R. Co., 238 U. S. 516 involved the Commodities Clause of the Hepburn Act.

Hart Steel Co. vs. R. R. Supply Co., 244 U. S. 294 rests upon the finding that Hart Steel and Guilford S. Wood, its salaried manager, acted wholly under the authority and in the interest of the Elyria Company against which a judgment had been entered. It certainly cannot be said of the present case as it was of the Hart Steel Company case by Mr. Justice CLARKE (page 98) that

“Identity of interest could not be clearer or closer than it was between the defendants in the two cases, they represented precisely the same, single interest, and the Hart Company and Wood as agents of the Elyria Company were obviously and necessarily privies to the judgment rendered in its favor in the Circuit Court of Appeals for the Sixth Circuit.”

Southern Pacific Co. vs. Lowe, 247 U. S. 330 was an action to recover a tax imposed upon dividends in form received by the plaintiff from another corporation and alleged by the plaintiff to have been paid out of a surplus accumulated not only prior to the effective date of the act but prior to the adoption of the Sixteenth Amendment to the Constitution.

The Southern Pacific Company

“Besides being sole stockholder was in the actual physical possession of the railroads and all other assets of the railway company, and in charge of its operations, which were conducted in accordance with the terms of a lease made by the prede-

cessor company to the Southern Pacific and assumed by the railway company, the effect of which was that the Southern Pacific should pay to the lessor company \$10,000 per annum for organization expenses, should operate the railroads, branches and leased lines belonging to the lessor, and account annually for the net earnings, and if these exceed 6% on the existing capital stock of the lessor the lessee should retain to itself one-half of the excess; * * * The Southern Pacific acted as cashier and banker for the entire system; The Central Pacific kept no bank account, its earnings being deposited with the bank account, of the Southern Pacific; and if The Central Pacific needed money for additions and betterments or for making up a deficit of current earnings the necessary funds were advanced by the Southern Pacific." (p. 332.)

Mr. Justice PITNEY concludes his opinion with these words:

"The case turns upon its very peculiar facts, and is distinguishable from others in which the question of the identity of a controlling stockholder with his corporation has been raised." (p. 338.)

It would seem as if these quotations from the opinion sufficiently distinguish this case from the present.

Gulf Oil Corp. vs. Lewellyn, 248 U. S. 71 was

"a suit to recover ^{a tax} levied upon certain dividends as income. The petitioner was a holding company owning all the stock in the other corporations concerned except the qualifying shares held by directors. These companies with other constituted a single enterprise, carried on by the petitioner, of producing, buying, transporting, refining and selling oil. The subsidiary companies had retained their earnings, although making some loans interest, and all their funds were invested in property or actually required to carry on the business, so


that the debtor companies had no money available to pay their debts. In January, 1913, the petitioner decided to take over the previously accumulated earnings and surplus and did so in that year by votes of the companies that had control. But, disregarding the forms gone through the result was merely that the petitioner became the holder of the debts previously due from one of its companies to another. It was no richer than before, but its property now was represented by stock in and debts due from its subsidiaries, whereas formerly it was represented by the stock alone, the change being effected by entries upon the respective companies' books. The earnings thus transferred had been accumulated and had been used as capital before the taxing year" (pp. 71, 72).

Upon this statement this court affirmed the decision of the district court giving judgment for the petitioner. Mr. Justice Holmes writing:

"We are of opinion that the decision of the District Court was right. It is true that the petitioner and its subsidiaries were distinct beings in contemplation of law, but the facts that they were related as parts of one enterprise, all owned by the petitioner, that the debts were all enterprise debts due to members, and that the dividends represented earnings that had been made in former years and that practically had been converted into capital, unite to convince us that the transaction should be regarded as bookkeeping rather than as 'dividends declared and paid in the ordinary course by a corporation'."

In the last analysis the argument of the Commission is that The Brooklyn Union Gas Company must pay the losses of other gas companies, the shares of stock of which it has purchased.

The Brooklyn Company owes no franchise duty to the communities served by these companies.



X Where would it get the money to pay these losses? Surely not from its own consumers in Brooklyn. It can collect only the just and reasonable price which is the cost of manufacture and distribution including taxes, etc., and a fair return on the property with which it serves Brooklyn.

The losses in Queens County must therefore be paid out of the net corporate income applicable to dividends. No one will pretend that the losses in Queens County can figure in the computation of a reasonable rate to consumers in Brooklyn. As well might it be asserted that the rates in Brooklyn must be decreased whenever there is a profit in Queens. It would result that the stockholders of The Brooklyn Union Gas Company would receive less than the just and fair return on the value of their property *as a result of this order under review*. That is arbitrary, capricious and beyond the power of the Commission.

Respectfully submitted,

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FILED

OCT 19 1925

WM. A. STANBURY
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Supreme Court of the United States

October Term, 1925

No. 33.

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THE PEOPLE OF THE STATE OF NEW YORK
on the relation of **THE WOODHAVEN GAS**
LIGHT COMPANY

Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK,

Defendant in Error.

Motion to Dismiss and Affirm in Support Thereof
and Brief in Support of Motion.

CHARLES S. BLANCHARD
Attorney for Plaintiff in Error
of Grand Jurors
New York City

WILLIAM A. DUNN
of Counsel

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203 App. Div. 369,
236 N. Y. 530. (No opinion)

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK, on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

NOTICE OF MOTION.

PLEASE TAKE NOTICE that on Monday, the 19th day of October, 1925, at the hour of noon or as soon thereafter as counsel may be heard, at the Supreme Court Room in the City of Washington, District of Columbia, the following motion to dismiss the writ of error herein will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

AND PLEASE TAKE FURTHER NOTICE, that the motion is now made pursuant to the permission granted by the Court in

the course of the argument in the above-entitled matter on the 12th day of October, 1925.

Dated, New York, October 17, 1925.

CHARLES G. BLAKESLEE,
Counsel for Defendant-in-Error,
No. 30 Church Street,
Borough of Manhattan,
City of New York.

To:

CULLEN & DYKMAN, Esquires,
Solicitors for Plaintiff-in-Error,
177 Montague Street,
Borough of Brooklyn,
City of New York.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
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THE STATE OF NEW YORK,
Defendant-in-Error.

MOTION TO DISMISS WRIT OF ERROR.

Comes now the Public Service Commission of the State of New York, the defendant-in-error herein, and respectfully moves this Court to dismiss the writ of error issued herein on June 5, 1923, because

There is no real or substantial controversy between the parties and so the case has become moot, inasmuch as, since said writ of error was issued and within the past fifteen (15) months, the plaintiff-in-error has constructed transmission and distribution mains in and is now actually serving two (2) of the communities named in the order adopted by the Public Service Commission for the First District on April 20, 1920, the validity of which order was the matter in issue herein, and the plaintiff-in-error has constructed transmission and/or distribution mains in the territory adjacent to the other communities named in said order as

part of its present plan to give gas service to such communities.

The facts stated above are shown by the respective affidavits of William A. Prendergast, Edward M. Deegan, and William Merrifield, all of which are verified the 17th day of October, 1925, and are hereto attached, and made a part hereof.

Dated, New York, October 17, 1925.

CHARLES G. BLAKESLEE,
Counsel for Defendant-in-Error,
No. 30 Church Street,
Borough of Manhattan,
City of New York.

**Affidavits in Support of Motion of Defendant-in-Error
to Dismiss.**

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK, on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss. :

WILLIAM A. PRENDERGAST, being duly sworn, deposes and
says:

I am and since April 25, 1921 have been a member and
the Chairman of the Public Service Commission for the
State of New York, which Commission on the aforesaid date
succeeded to the powers and duties of the former Public
Service Commission for the First District with respect to
jurisdiction over gas and electrical corporations within the
City of New York.

That said Public Service Commission was substituted
in the place and stead of said former Public Service Com-

mission for the First District in the above entitled case on or about October 14, 1921, and, through its Counsel, has since participated in all proceedings in connection therewith.

This case involves an order made by the former Public Service Commission for the First District on April 20, 1920, directing the Woodhaven Gas Light Company to extend its mains so as to serve with gas the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton in the Fourth Ward of the Borough of Queens, City of New York.

During the latter part of 1923 and the early part of 1924 property owners and residents of the territory lying south and east of the company's then existing mains made frequent visits to the offices of the Commission and had numerous interviews with me with a view of getting gas service to that territory. Thereafter, I invited Mr. James H. Jourdan, President of The Brooklyn Union Gas Company, to call so that we might discuss the desires of the people for gas service. Mr. Jourdan and I consulted upon the subject several times, and, about the latter part of April, 1924, Mr. Jourdan agreed that the gas company would commence the installation of the necessary mains and that such installation would be carried to Springfield and Laurelton and the other territories named in the Commission's order, besides other communities not so named; and that, irrespective of the litigation, the company would undertake to serve those territories. Mr. Jourdan said that he might not be able to secure the necessary quantities of pipe before the fall but they would commence as soon as possible. Indeed, as appears from the letter of Mr. Waldron, Assistant Superintendent of The Brooklyn Union Gas Company, (a copy of which is attached to the following affidavit of

William Merrifield) the extension of gas mains was commenced on June 28, 1924 and has been continued since that time.

It seems proper to observe that Mr. Jourdan did not agree to furnish gas service to the particular communities named in the Commission's order of April 20, 1920, disregarding the rights of the communities on the way. In fact he could not very well do this as under Section 62 of the Transportation Corporations Law of the State of New York, applicants for gas service within 100 feet of the nearest gas main are entitled to service within ten days from the date of application, except in a few specified instances.

The assurance from Mr. Jourdan that the company would go ahead with the work of extending the gas mains seemed to me to be a much better solution of the matter than continued litigation and, indeed, in view of such assurance, I considered further litigation immaterial and unnecessary. Accordingly, when during the latter part of January, 1925 Counsel for the gas company requested Mr. Deegan, who had been in immediate charge of the litigation for the Commission, to consent to a postponement of the case until the next term of this Court, such consent was granted because the Commission knew that the actual installation of the new mains was then under way and, as the work was being done, it did not seem that any delay in arguing the case before this Court could possibly prejudice the installation of the required service.

During the latter part of February, 1925, Mr. Deegan reported to me that the officials of the gas company on February 24, 1925 had assured him that the company was building and would continue to build and proceed diligently

to extend its mains through the places specified in the Commission's order, serving also the communities on the way to Springfield.

In the early part of September, 1925, I received a communication from the secretary to the Honorable Alfred E. Smith, Governor of the State of New York, transmitting a communication from a resident of Laurelton, complaining because Springfield and Laurelton had not yet received gas service. In order that I might have the latest information as to the company's program I directed Mr. William Merrifield, who is the Commission's engineer in charge of gas matters, to find out from the officials of the company the details of the work that had been done and the future program of the company for serving that territory.

As a consequence, Mr. Merrifield consulted with Mr. Waldron and, as a result of the conference between them and at my request, the letter dated September 14, 1925 was sent by Mr. Waldron to Mr. Merrifield. A copy of that letter is attached to the following affidavit of Mr. William Merrifield. That letter was accepted by me as the latest expression from the company's officials as to their present plan to serve the sections hitherto unserved, and, indeed, was merely a confirmation of what the Commission already understood to be the company's existing program. In my reply to Governor Smith on October 1, 1925, I enclosed a copy of that letter and also a copy of Mr. Merrifield's report, the substance of which is contained in the latter's affidavit submitted herewith.

It is plain from a study of the map furnished to the Commission by the gas company and corrected to September 9, 1925 (see the following affidavit of Edward M. Deegan) and from an analysis of Mr. Waldron's letter that

the program initiated in accordance with President Jourdan's assurance to me, did not contemplate reaching all of the communities specified in the Commission's order of April 20, 1920 in the shortest possible time or in the shortest possible way, as in this instance the shortest possible way is not the shortest *practicable* way. The Commission approves of the opinion of its engineer, Mr. Merrifield that the company's program does indicate a satisfactory conception of the engineering problems concerning the furnishing of gas service to the entire so called Springfield area including the communities named in the Commission's order and many other communities, and also of his opinion that the installations which have been made thus far indicate that the work is being carried on with reasonable promptness. In view of the assurance from the officials of the gas company that the work would be done and will be proceeded with as outlined and that much of the work has already been done, is now under way or is to be constructed, it does not appear to the Commission that there is any real or substantial controversy between it and the gas company.

WILLIAM A. PRENDERGAST

Sworn to before me this 17th }
day of October, 1925. }

MICHAEL GOODMAN

Notary Public, Kings County

Kings Co. Clerk's No. 210 Reg. No. 6253

N. Y. Co. Clerk's No. 578 Reg. No. 6464

Commission expires March 30, 1926

(Seal)

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK, on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss. :

EDWARD M. DEEGAN, being duly sworn, deposes and says:

I am and since April 25, 1921 have been an Assistant Counsel to the Public Service Commission of the State of New York, and for some years prior to said date held a similar position with the Public Service Commission for the First District, a predecessor of the present Public Service Commission.

I am familiar with all the proceedings had both prior and subsequent to the adoption of the order made by said former Public Service Commission for the First District on April 20, 1920, directing the extension of gas mains by the Woodhaven Gas Light Company into the communities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton. Subject to the direction

of the Commission and its Counsel, I have been in immediate charge of the litigation with respect to that order, which is now before this Court in the above-entitled case.

After the receipt of complaint against the Woodhaven Gas Light Company, said former Public Service Commission for the First District on June 10, 1919 adopted a hearing order to inquire and determine whether an order should be made directing that company to extend its gas mains, services and other apparatus to such extent as may be necessary to reasonably furnish gas to the residents of Springfield, Laurelton, Rosedale, Rosedale Terrace, St. Albans, Locust Manor, Locust Lawn, South Jamaica Place, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bay View Landing in the Borough of Queens, City of New York (R., 15).

After nine (9) hearings had been held, that Commission on April 20, 1920 adopted an order directing the extension of mains to serve Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton, but without prejudice to any further proceeding or proceedings in respect to the extension of the gas mains and services to the other communities named in the hearing order (R., 5, 6).

The plaintiff-in-error on July 17, 1920 obtained a writ of certiorari and a stay of the enforcement of said order (R., 10-13).

On April 1, 1921, the return to the writ of certiorari was filed (R., 13).

On October 14, 1921 an order was made substituting the present Public Service Commission in the place of the former Public Service Commission for the First District.

On November 17, 1922, the Appellate Division of the

Supreme Court, First Department, of the State of New York, handed down its unanimous decision dismissing the writ and confirming in all respects the Commission's order (R., 344-7). The opinion of the Appellate Division is officially reported in 203 App. Div. 369.

On November 28, 1922, the plaintiff-in-error served a notice of appeal to the Court of Appeals, before which Court the case was argued on April 19, 1923 and a decision rendered on May 8, 1923 unanimously affirming, without opinion, the order of the Court below (R., 348-9). The decision of the Court of Appeals is officially reported in 236 N. Y. 530.

On June 1, 1923, an order was made by the Chief Judge of the Court of Appeals allowing the writ of error herein, and such writ was issued on June 5, 1923 and served shortly thereafter upon the Commission (R., 355-7).

The case duly came on the call calendar of this Court during the week beginning January 26, 1925. Mr. William N. Dykman, of counsel for the plaintiff-in-error, telephoned to me either on January 26 or on January 27, 1925 and stated, in effect, that he had received word from the clerk of this Court that the case would be reached for argument within the next few days, that the clerk inquired whether the case was to be argued, and that Mr. Dykman had informed the clerk that the printed transcript of the record had not been received. Mr. Dykman wished to know whether, under the circumstances, I would stipulate to the continuance of the case to the next term. I told him that I thought such a stipulation would be signed. At that time the Commission knew and I had been informed that the actual installation of new mains into some of the territories covered by the Commission's order was then under way.

On January 27, 1925, I received a letter from Mr. Dykman enclosing a proposed stipulation for such continuance, subject to the approval of this Court. After speaking to Mr. Charles G. Blakeslee, the Counsel to the Commission, I signed the stipulation and returned same to Mr. Dykman upon the same day. In his letter of January 27, 1925, among other things, Mr. Dykman said:

“I am not sure that we shall want to argue the case, but must defer decision on that point until consultation with the Gas Company.”

About the middle of February, 1925, some of the people interested in having the mains extended to Springfield and Laurelton telephoned to me, complaining because the Commission had consented to the postponement of the argument before this Court. I told such complainants that, as I understood the work was going on, it appeared immaterial to me whether the case was actually argued or not.

In order to be in a position to properly advise those who had inquired and might inquire about the company's plan, I considered it advisable to get some definite information from the company's officials as to what work had been done and was to be done in order to serve the residents of Springfield and the adjacent localities. In order that an interview might be arranged at which the counsel for the gas company might be present, I telephoned to the office of Cullen and Dykman, and asked for Mr. William N. Dykman, who, I was informed, was out of town and would be away for some days. I was also told that Mr. J. A. Dykman was out of the country at the time. It is my recollection that I then explained the situation to Mr. T. Shea, an attorney in the office of Cullen and Dykman, who arranged for me to

call upon Mr. James H. Jourdan, President of The Brooklyn Union Gas Company. On Tuesday, February 24, 1925 I called at the company's office and discussed the matter with Mr. Jourdan and Mr. Arthur S. Staniford, Vice-President of The Brooklyn Union Gas Company. They showed me a map indicating the mains which had been laid and the mains proposed to be laid to serve the hitherto unserved "Springfield" section. In the light of our discussion, it seemed plain that the company was going forward with its construction program into Springfield and the nearby communities. Towards the close of our conversation, I asked whether they had any objection if I informed those outside of the Commission, who had inquired or might inquire about the matter, that it was the plan of the company to continue to build and proceed diligently to extend into Springfield. Both Mr. Jourdan and Mr. Staniford told me that there was no objection, but that the company in their construction program also proposed to serve the localities along the route. Upon my return to the Commission's office, I made a memorandum, the original of which is now in my possession, and which reads as follows:

Tues. Feb. 24, 1925.

Conferred this P. M. (2:45 to 3:55 P. M.) with Pres. Jourdan & Vice Pres. Staniford re Springfield Extension. Showed me map of what has been & what co. proposes to do. Assured me that co. is going to continue to build and proceed diligently and go right to Springfield building mains to serve settlements on the way as part of plan. Most of pipe received, I think he said.

A day or two later, I informed Chairman Prendergast of my conversation with Mr. Jourdan and Mr. Staniford.

A short time after my interview with Mr. Jourdan and Mr. Staniford a blue print map was sent to me by Mr. C. C. Atwood, the Assistant Chief Engineer of the Brooklyn Union Gas Company, on which map was indicated in red the mains which had been extended through the so-called "Springfield" section. In order that the Commission might have information as to the progress of the work from time to time, this map has been sent back to Mr. Atwood on several occasions in order that the company might show thereon such additional mains as may have been laid. The map in question was last returned to me by Mr. Atwood on September 16, 1925, and shows the extensions which have been made up to September 9, 1925. A photostatic copy of that map is hereto attached, made a part hereof and marked Exhibit A.

It appears from an examination of that map that mains have been laid in and through the communities designated as Locust Manor, Locust Lawn, Jamaica Junction, St. Albans, St. Albans Heights, and the section immediately adjacent to and north of Springfield; and that other mains have been constructed along highways such as Rockaway Turnpike, Farmers Avenue, Locust Avenue adjacent to other communities shown upon said map, including South Jamaica Place and Springfield.

Relying upon the statements made to me by Mr. Jourdan and Mr. Staniford, I have informed those who have inquired as to the company's plan that it was my understanding that the company intended in good faith to proceed dili-

gently to construct its gas mains into Springfield and Laurelton, besides the intervening and adjacent communities.

On September 25, 1925, Mr. J. A. Dykman, of counsel for the plaintiff-in-error, informed me that it had been decided to proceed with the argument of this case before this Court. On September 28, 1925, the brief in behalf of the plaintiff-in-error was served. On October 7, 1925 the brief in behalf of the defendant-in-error was served. The case was argued on October 12, 1925, at which time this Court granted permission to file formal motion papers asking for a dismissal of the writ of error.

EDWARD M. DEEGAN

Sworn to before me this 17th }
day of October, 1925. }

MICHAEL GOODMAN

Notary Public, Kings County

Kings Co. Clerk's No. 210 Reg. No. 6253

N. Y. Co. Clerk's No. 578 Reg. No. 6464

Commission expires March 30, 1926

(Seal)

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK, on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,
vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

WILLIAM MERRIFIELD, being duly sworn, deposes and says:

I am and since April 25, 1921, have been the Gas Engineer for the Public Service Commission of the State of New York, and from August 1, 1919 to April 25, 1921 held a similar position with its predecessor, the Public Service Commission for the First District.

I have been associated with the gas industry for thirty-four (34) years, thirteen (13) of which were in the ranks and fifteen (15) in connection with supervisory capacities in the gas manufacture, gas distribution, the laying of gas mains and the installation of gas services and the setting of meters.

In the following paragraphs I have set forth in chronological order the history of my relations with the gas business.

From 1891 to 1904:

1. I was employed continuously in the gas industry filling all minor positions in gas manufacturing and distribution departments; also spent three years in commercial departments which dealt with service to gas consumers. During this period I worked at the laying of gas mains of various sizes from 3 inches to 12 inches, and embracing cast iron and wrought iron materials. I also tapped gas mains for service connections, installed the service, and set the gas meters. Those various occupations involved excavations and back-filling of trenches, laying of pipe, caulking and joining, making of screw and flange connections, at all of which tasks I was employed.

From 1904 to 1907:

2. Foreman, Consolidated Gas Company, New York, N. Y. Charge of all gas production for enrichment of coal gas so that resultant mixture would meet the standard of gas quality fixed by law. Supervision of force ranging from two to seven men.

From 1907 to 1915:

3. Foreman, Consolidated Gas Company, New York, N. Y. Charge of manufacturing plant operating force. Conducted experiments to determine values of coal, coke, oil, tar and gas purification materials. Testing of gas and gas analyses. From twenty-one to one hundred ten men under my direction.

From 1915 to 1917:

4. Foreman, Astoria Light, Heat and Power Company, Astoria, N. Y.. Charge of working force, coal-gas plant. Care and maintenance of machinery and equipment. Care of furnace and regulation of temperatures. From fifteen to thirty men under my direction.

From 1917 to 1919:

5. Engineer in charge, Consolidated Gas Company, New York, N. Y. General charge of gas manufacture and distribution in one of the plants of this company. Care and maintenance of structures and plant equipment. Conversion of coal-gas plant to carbon-production plant, which included the design and installation of various items of auxiliary equipment, also designed the different plant tools made necessary for the radical difference in the work to be performed. Organization and training of force of three hundred fifty men in the carbonization of shells, fruit pits, etc. (War activities U. S. Government.) Restoration of plant to original condition.

From 1919 to 1925:

6. Gas Engineer, Public Service Commission, State of New York. My duties with the Commission involve investigations and appraisals of gas properties, investigations of gas manufacturing and distribution methods, preparation of estimates on gas main extensions, preparation of estimates on gas production costs, investigation and reports to the Commission on gases of varying compositions, reports to the Commission on technical gas matters, aid to counsel and Commission in preparation of gas proceedings,

expert witness on technical gas subjects before Federal and State courts, and the Public Service Commission supervision of Commission's gas organization and the handling of all technical gas correspondence for the Public Service Commission.

I am a member of the American Gas Association. I was formerly a member of the Society of Gas Engineering of the City of New York. I am a member of the American Society of Mechanical Engineers and am a licensed professional engineer of the State of New York.

I am familiar with the operations of The Woodhaven Gas Light Company so far as they related to the extension of gas service to the territory commonly known as the "Springfield Section", which familiarity resulted from a number of investigations made upon the complaint or at the request of prospective gas users in that locality.

In accordance with the directions of the Honorable William A. Prendergast, Chairman of the Public Service Commission of the State of New York, I made, recently, a study of the gas main map system of The Woodhaven Gas Light Company, and in connection therewith, visited the office of The Brooklyn Union Gas Company on September 10, 1925, and there interviewed Mr. J. H. Waldron, the Company's Assistant Superintendent, in charge of Distribution.

I explained to Mr. Waldron that Governor Smith had referred to the Chairman of the Commission a letter from a resident of Laurelton, who had complained to the Governor about the delay in getting gas service to Springfield and Laurelton, and that the Chairman desired first-hand information on the status of the Springfield extension. Mr. Waldron showed me a map and explained to me the various

markings indicating the mains which had been laid, and which the company was about to lay in order to serve the territory in question.

At the end of the conference, I requested Mr. Waldron to furnish me with a report of the progress so far made and the future program of the company with respect to the introduction of gas service into the so-called "Springfield Section," which, we understood, included the localities known as Locust Manor, Locust Lawn, South Jamaica Place, Springfield (including Springfield Gardens) and Laurelton.

Subsequently, I received a letter, dated September 14, 1925, from Mr. Waldron, a copy of which letter is hereto annexed and marked "Exhibit A"; in so far as that letter relates to gas main installations already completed, I know it to be correct, as investigations have been made on behalf of potential gas users in practically every section where it is specified that gas mains have been installed.

As I had been requested by Chairman Prendergast to get in touch with Mr. Jourdan, the President of The Brooklyn Union Gas Company, and advise him of the Chairman's purpose to discuss with him the situation, I endeavored to reach Mr. Jourdan after I had received the letter from Mr. Waldron, but was informed that Mr. Jourdan was out of town. I then talked with Mr. C. E. Paige, a Vice-President of The Brooklyn Union Gas Company, the substance of whose statements to me were that he would be glad to confer with Chairman Prendergast, and that he was familiar with the Springfield matter and that the outline of the work done and future program of the company, as set forth in the letter from Mr. Waldron, was evidence of the company's desire to meet the situation as understood by the company

and Chairman Prendergast. Later I reported the substance of my conversation with Mr. Paige to the Chairman, and also handed him the letter from Mr. Waldron.

It is my opinion that while it would have been possible to complete the construction of gas mains to Springfield and Laurelton before this time, such a program would not be practical from an engineering viewpoint inasmuch as the supply of gas would come from one source only and would undoubtedly result in an inadequate gas service to many residents of the district. This point may be better understood when it is realized that a gas system which depends upon one source of supply is one where it is most difficult to maintain adequate pressures because of the multiplicity of dead-end mains which must of necessity form a major part of the construction.

In the construction of a comprehensive gas main installation, it is imperative that provision be made for what is known in the industry as "gas circulation." The circulating arteries are large feeder mains which must follow a belt system, in order to have more than one source of supply. The lateral mains running from the feeders depend for their supply upon the maintenance of proper circulation in the feeder system. A single feeder main running through this territory would not meet the requirements necessary to maintain adequate gas service and because of such, it would be impractical to confine the installation of gas mains to the territory particularly referred to in the order of the Commission.

The program followed by The Woodhaven Gas Light Company squares with good engineering practice from the viewpoint of a comprehensive system of embracing territory hitherto unserved with gas. The company's program

indicates a comprehensive conception of the engineering problem involved in furnishing gas service to what may be termed the Springfield area, and the installations thus far made indicate that the work is progressing with reasonable alacrity.

It is also my opinion that, from a study of the map showing the gas mains heretofore laid, (a copy of which map is attached to the preceding affidavit of Edward M. Deegan), it is now practicable from a gas engineering standpoint to supply gas from the 12-inch transmission main now located on Farmer's Avenue into the locality designated "Springfield" on said map; or to extend its present distribution mains from Jamson Avenue in the locality immediately north and adjacent to Springfield so as to serve Springfield and Laurelton. It is also practicable from an engineering standpoint to serve South Jamaica Place from the 12-inch transmission mains now located on Farmer's Avenue, or from the end of the transmission main located on Locust Avenue and extending a short distance east of the railroad as shown on the aforesaid map.

WILLIAM MERRIFIELD

Sworn to before me this 17th }
day of October, 1925. }

MICHAEL GOODMAN

Notary Public, Kings County

Kings Co. Clerk's No. 210 Reg. No. 6253

N. Y. Co. Clerk's No. 578 Reg. No. 6464

Commission expires March 30, 1926

(Seal)

Exhibit A.

THE BROOKLYN UNION GAS COMPANY
Street Department
176 Remsen Street.

Brooklyn, N. Y. September 14, 1925.

Mr. William A. Merrifield,
Chief Engineer,
Public Service Commission,
30 Church Street, New York City.

Dear Sir:—

Confirming our conversation of the 10th inst., this Company started the extension of gas mains in the section known as Springfield on June 28, 1924.

At that time the work was started at two locations, viz. Farmers Avenue, south of 112th Avenue, and New York Avenue and Platt Street, constructing a 12" main through Farmers Avenue to Central Avenue, through Central Avenue to Burr Avenue, reducing to 6" through Burr Avenue to Undercliff Avenue, through Undercliff Avenue to New York Avenue, through New York Avenue to Platt Street, where the 12" size was resumed. This completed a main to give circulation and laterals were run to supply all of the buildings adjacent thereto. Upon the completion of these laterals twelve inch extensions were run through New York Avenue, from Undercliff Avenue to South Miller Street, and through Locust Avenue, from the railroad crossing east of New York Avenue to Rockaway Boulevard, through Rockaway Boulevard to Three Mile Mill Road, where con-

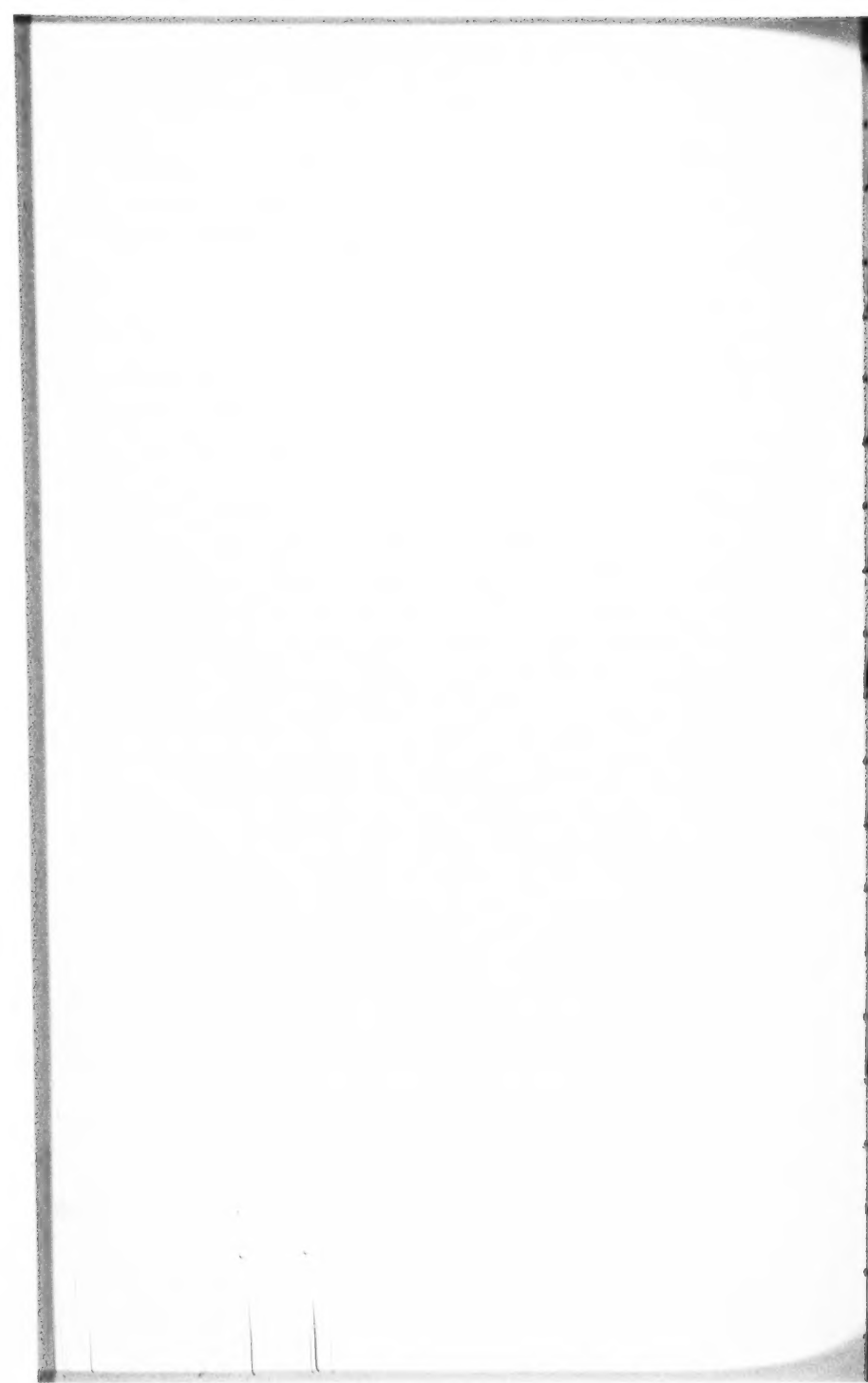
nection was made to an existing 12" line. Upon the completion of these 12" mains, laterals were run through the streets of Locust Manor and Locust Lawn, supplying the houses in that section. At the same time a 12" main was extended in Central Avenue, from Farmers Avenue to Bank Street, and through Farmers Avenue, from Central Avenue to approximately Irving Place, after which laterals were laid to supply the buildings in the section known as St. Albans Heights. A 12" main was then laid through Rockaway Boulevard, from Locust Avenue to Farmers Avenue, and through Farmers Avenue, from Rockaway Boulevard to Irving Place, after the completion of which laterals were laid to supply buildings in Jamaica Junction and we are continuing to construct laterals on this 12" main at the present time which will supply the sections locally designated as South Jamaica Place, Springfield Gardens, Hickview Park, Springfield Park, Jamaica Gardens, Idlewild Park and the south-westerly section of Springfield.

To date there has been laid about 30 miles of mains and 1,797 services. There remains to be constructed approximately 50 miles of mains to supply the remaining buildings in the territory.

It is our intention to continue the program we have adopted in this locality. This should enable us to complete the construction of mains and services in the Springfield territory within the next two years.

Yours very truly,

(Sgnd) J. H. WALDRON,
Assistant Superintendent.



Supreme Court of the United States

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK, on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,
Defendant-in-Error.

BRIEF ON BEHALF OF DEFENDANT-IN-ERROR IN SUPPORT OF MOTION TO DISMISS WRIT OF ERROR.

Statement.

In the course of the argument before this Court on October 12, 1925, in the above case, permission was granted to counsel for the defendant-in-error to prepare and submit on October 19, 1925, formal motion papers on a motion to dismiss the writ of error. Accordingly, the foregoing motion papers, with notice thereof, and this memorandum have been prepared and served upon the solicitors for the plaintiff-in-error, and are now submitted.

The case comes before this Court on a writ of error to the Supreme Court of the State of New York, after an order made by the former Public Service Commission for the First District of that State had been unanimously affirmed by the Appellate Division, First Department, and the order of that Court had been unanimously affirmed by the Court of Appeals (Motion Papers 12; R. 345-9). The writ of error was issued on June 5, 1923 (M. P. 12; R. 356).

The order of the Commission, made after nine hearings on April 20, 1920, directed the plaintiff-in-error to extend its gas mains so as to serve Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton, which are five communities located in the Fourth Ward of the Borough of Queens, City of New York (M. P. 11; R. 5).

Although the Commission's order is attacked as confiscatory and in violation of the Fourteenth Amendment, the gas company, within the past fifteen months, has constructed its mains into and is now serving two of the communities named in that order, and has constructed large transmission mains adjacent to, and is about to extend its distribution mains into, the other communities.

POINT I.

There is no real or substantial controversy between the parties, inasmuch as the gas company has constructed its mains and is now actually serving two of the places named in the Commission's order of April 20, 1920, and has given assurances, even as recently as September 14, 1925, that it is continuing to construct its mains for supplying the other places named in said order, and a number of other communities not covered by said order.

The attention of the Court is called particularly to the letter of Mr. J. H. Waldron, Assistant Superintendent of the Street Department of the Brooklyn Union Gas Company, addressed to Mr. William Merrifield, the Commission's Gas Engineer, a copy of which letter is attached to the latter's affidavit and marked Exhibit A (Printed on pages 24 and 25 of Motion Papers). That letter was written a few days after a conversation between those two gentlemen, and at Mr. Merrifield's request that Mr. Waldron furnish "a report of the progress so far made and the future program of the company with respect to the introduction of gas service into the so-called Springfield Section" (M. P. 21). The conference or conversation in question was held on September 10, 1925, after Chairman Prendergast had directed Mr. Merrifield "to find out from the officials of the company the details of the work that had been done and the future program of the company for serving that territory" (M. P. 8). It is significant that the letter of Mr. Waldron was *approved by Vice-President Paige of The Brooklyn Union Gas Company* because the latter had informed Mr. Merrifield that "the outline of the work done and future program of the company, as set forth

in the letter from Mr. Waldron, was evidence of the company's desire to meet the situation as understood by the company and Chairman Prendergast" (M. P. 21).

An analysis of that letter discloses the following facts:

1. That the letter is written on the letter-head of the Brooklyn Union Gas Company, Street Department, and is dated *September 14, 1925*.

2. That "this Company" (apparently, The Brooklyn Union Gas Company) "started the extension of gas mains in the section known as *Springfield* on *June 28, 1924*."

3. That after the completion of certain twelve (12) inch mains "laterals were run through the streets of *Locust Manor* and *Locust Lawn*, supplying the houses in that section".

4. That after the construction of a twelve (12) inch main in Central Avenue and Farmers Avenue "laterals were laid to supply the buildings in the section known as *St. Albans Heights*."

5. That after the construction of a twelve (12) inch main through Rockaway Boulevard, from Locust Avenue to Farmers Avenue, and through Farmers Avenue, from Rockaway Boulevard to Irving Place, "laterals were laid to supply buildings in *Jamaica Junction*".

6. That "*we are continuing to construct laterals on this 12" main at the present time which will supply the sections locally designated as South Jamaica Place, Springfield Gardens, Hickview Park, Springfield Park, Jamaica Gardens, Idlewild Park and the southwesterly section of Springfield*".

7. That up to September 14, 1925, the company had constructed "about 30 miles of mains and 1797 services."

8. That approximately fifty (50) more miles of mains are to be constructed "to supply the remaining buildings in the territory", and

9. That "*it is our intention to continue the program we have adopted in this locality*" which should enable the company to complete the construction of mains and services in the Springfield territory within the next two years.

(Italicization in foregoing, supplied.)

The location of the transmission and distribution mains described by Mr. Waldron is shown by the red lines on the map marked Exhibit A and attached to the affidavit by Edward M. Deegan (M. P. 16a), which map is a photostatic copy of a map furnished by the gas company and corrected to September 9, 1925.

Reading Mr. Waldron's letter in connection with that map, it will be seen that the company is now actually serving the communities of *Locust Manor*, *Locust Lawn*, which are two of the places named in the Commission's order of April 20, 1920—and also the communities of St. Albans, St. Albans Heights, Jamaica Junction *and the locality immediately adjacent to and north of Springfield*. It should be noted that when the Commission's order was made, the testimony showed that the nearest suitable transmission main for serving the Springfield territory terminated at New York Avenue and Platt Street, which is about 2½ miles away from the northerly part of the so-called village of Springfield (R. 154-5). It is apparent from a study of the map (M. P. 16a Exh. 1) that at the present time the 12" transmission main on Farmers Avenue lies only about half

a mile away from that northerly portion and that the distribution mains (called "laterals" in Mr. Waldron's letter) on Jampson Avenue lie only a few blocks away. It is practicable from an engineering standpoint to supply Springfield and Laurelton from the aforesaid mains, and it is likewise practicable to serve South Jamaica Place from the 12" transmission main on Farmers Avenue, or from the end of the transmission main on Locust Avenue extending a short distance east of the railroad tracks (M. P. 23; aff'd of Wm. Merrifield).

Considering the proximity of its mains to South Jamaica Place and Springfield (the largest community in the unserved territory [R. 285])—both of which are specified in the Commission's order—it would seem that the Commission and the Court would be justified in concluding without any word from the gas company that the latter proposes to serve those communities in the near future. But as recently as September 14th of this year, the company assured the Commission that "We are continuing to construct laterals on this 12" main at the present time which will supply the sections locally designated as *South Jamaica Place, Springfield Gardens, Hickview Park, Springfield Park, Jamaica Gardens, Idlewild Park and the southwesterly section of Springfield.*" (M. P. 25.)

The "South Jamaica Place" referred to is, of course, the locality called by that name in the Commission's order.

Although the Commission's order does not mention "Springfield Gardens" and that locality is not designated by that name upon any of the maps in the Printed Record, the counsel for the plaintiff in error, during the cross-examinations of one of the residents of Springfield, established the fact that the locality known as Springfield Gardens "*would be all of Springfield*" (R. 64, Fol. 116). It

should also be noted that the Central Gas Committee of the Fourth Ward had all prospective gas users address their cards to that committee's office at "Springfield Gardens" (M. P. 283; Exh. 5).

It also appears from the letter from Mr. Waldron that not only is "Springfield Gardens" to be served but also "the southwesterly part of Springfield", so that there is no doubt of the company's intention to go into the community of Springfield.

The letter from Mr. Waldron, approved as it was by Vice-President Paige (M. P. 21) was accepted by the Chairman of the Commission "as the latest expression from the company's officials as to their present plan to serve the sections hitherto unserved, and, indeed, was merely a confirmation of what the Commission already understood to be the company's existing program" (M. P. 8). Such reliance was placed upon the company's good faith, as evidenced by that letter, that the Chairman sent a copy thereof on October 1, 1925, to the Governor of the State in connection with a complaint from a resident of Laurelton (M. P. 8).

If we had only that letter of September 14, 1925 and the map furnished by the company and corrected to September 9, 1925, the Commission and this Court would be justified in assuming that the matters formerly in dispute were settled. But in addition to those papers, we have the affidavit of the Chairman of the Commission showing that he had received assurances from the President of the Brooklyn Union Gas Company in April, 1924 "that, irrespective of the litigation, the company would undertake to serve those territories" (M. P. 6, 7). It also appears that the President and one of the Vice-Presidents of the Brooklyn Union Gas Company on February 24, 1925 assured Mr. Deegan.

of the Commission's counsel, that the company "is going to continue to build and proceed diligently and go right to Springfield building mains to serve settlements on the way as part of plan" (M. P. 14).

It should be further noted that the company up to September 14, 1925 had constructed about 30 miles of main in the Springfield territory (M. P. 25) although the Commission's order directing the extension into the five communities required the construction of only 16.17 miles (for details of last figure see page 32 of Brief submitted in behalf of Commission on the merits).

The company's present program as outlined in its letter of September 14, 1925, in the opinion of the Commission's gas engineer, shows a satisfactory conception of the engineering problems involved in furnishing gas service to the entire so-called Springfield area, and the installations thus far made indicate that the work is being carried on with reasonable promptness. The opinion of the Commission's gas engineer upon those questions meets with the approval of the Commission (M. P. 9).

Under the circumstances, it does not seem to the Commission that there is any real or substantial controversy between it and the gas company "in view of the assurance from the officials of the gas company that the work would be done and will be proceeded with as outlined and that much of the work has been done, is now under way or is to be constructed" (M. P. 9; Affidavit of Chairman Prendergast).

If, in spite of the foregoing, the company's officials should now attempt to deny that it is their present plan to proceed with the work, it would seem to be a proper inference that such a denial may be construed as one made only "for the purposes of the argument."

POINT II.

In the absence of any real and substantial controversy, the writ of error should be dismissed.

The real question in issue was whether the gas company should extend its mains so as to serve the inhabitants of Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton. As the gas company has extended the mains to Locust Manor and Locust Lawn and is actually serving those two sections, it is obvious that as to them "an affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other" (*Brownlow v. Schwartz*, 261 U. S. 216, at 217). With respect to the three other communities, it has been established by assurances even recently given to the Commission by the officials of the gas company that the gas company is going to continue its construction program for the area in question, and to proceed diligently to extend the mains so as to serve those sections within a reasonable time. Under such circumstances it cannot be properly said that, at the present time, there is any actual controversy, involving real and substantial rights.

Where no such controversy exists it has been held repeatedly that the case will be dismissed. A few of such decisions are:

Mills v. Green, 159 U. S. 651, 653;

Little v. Bowers, 134 U. S. 547, 557-9;

Brownlow v. Schwartz, 261 U. S. 216, 217 and cases cited therein.

This Court has declared that it has no power to decide moot questions or abstract propositions, or to declare for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it.

California v. San Pablo etc., Railroad, 149 U. S. 308, 313;

Richardson v. McChesney, 218 U. S. 487, 491.

Even where the plaintiff-in-error "felt coerced" into compliance, the writ of error will be dismissed.

American Book Co. v. Kansas, 193 U. S. 49, 52.

Where the matter has been compromised or settled between the parties, the case will be dismissed.

Dakota County v. Glidden, 113 U. S. 222.

The motive of the company in doing the work is quite immaterial.

Brownlow v. Schwartz, *supra*.

Laches in bringing the motion to dismiss has no bearing upon the question.

Little v. Bowers, *supra*.

This Court has also said "We conclude that in the exercise of our appellate jurisdiction over the courts of the several States we are not absolutely confined to the consideration and decision of the Federal questions presented, but as a necessary incident of that jurisdiction are authorized to inquire whether by some intervening event those questions have ceased to be material to the right disposition of

any particular case, and to dispose of it in the light of that event."

Gulf, Col. & S. F. Ry. v. Dennis, 224 U. S. 503,
508-9.

Conclusion.

In the final analysis, it seems obvious that the counsel for the plaintiff-in-error is now seeking to obtain a declaration of principles or rules of law which in reality will not affect the result as to the thing in issue in this case, so that this Court is now asked by the company's counsel to give an opinion upon moot questions or abstract propositions.

The writ of error should be dismissed.

Dated, October 17, 1925.

Respectfully submitted,

CHARLES G. BLAKESLEE,
Counsel for Defendant-in-Error.

EDWARD M. DEEGAN,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1925.

No. 33.

THE PEOPLE OF THE STATE OF NEW
YORK on the relation of THE WOOD-
HAVEN GAS LIGHT COMPANY,

Plaintiff-in-Error,

vs.

THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK,

Defendant-in-Error.

BRIEF ON BEHALF OF DEFENDANT-IN-ERROR.

Statement of Case.

This case is before this Court by a writ of error to the Supreme Court of the State of New York after the Court of Appeals of that State had affirmed unanimously the order of the Appellate Division, which had affirmed, also unanimously, an order made by the former Public Service Commission for the First District on April 20, 1920, directing an extension of the gas mains of the plaintiff-in-error into five specified communities.

Following the receipt of complaints against the Woodhaven Gas Light Company, that Commission held nine hearings to inquire and determine whether an order should be made directing that company to extend its gas mains, services and other apparatus to such extent as may be necessary, reasonably to furnish gas to residents of Springfield, Laurelton, Rosedale, Rosedale Terrace, St. Albans, Locust Manor, Locust Lawn, South Jamaica Place, Idlewild Park, Sheffield Manor, Springfield Park, Hickview Park, Jamaica Junction, Jamaica Gardens and Bay View Landing in the Borough of Queens, City of New York (R. 15).

The Commission's final order, however, did not direct an extension of the mains to all of those places but only to Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton (R. 5, 6).

The Commission had before it considerable testimony as to the public demand and necessity, estimates of the probable cost of making the extensions, the promises of the representatives of the gas company to extend the mains to Springfield, the relationship existing between the plaintiff-in-error and its parent company, The Brooklyn Union Gas Company, and other relevant matters.

The maximum cost of the extension, when ordered would not have exceeded \$170,000.00 (details to be shown later) which amount was accepted by the attorneys for the plaintiff-in-error for the purposes of the argument before the Court of Appeals. Before this Court, however, the same attorneys allege an estimated cost of \$271,574.71 (Brief for Plaintiff-in-Error, pp. 4, 6). That amount is highly excessive and improper because, while it does not include the estimated cost of the extension to Laurelton, it includes

such cost to St. Albans, Rosedale and Rosedale Terrace, which were not embraced in the Commission's final order.

According to its sworn annual report, the undepreciated book value of the property of the plaintiff-in-error in 1918 was \$660,591.96 (R. 310, Ex. 34) and its operating income \$37,999.19 (R. 315, Ex. 34) representing a net return of 5.75 per cent.

In their brief before the Court of Appeals, the attorneys for the plaintiff-in-error accepted for the purpose of the argument the figure of 625 as the total number of houses in the five localities, and that the occupants of 500 of these houses would take gas, and that the added operating income therefrom would have amounted to \$1,270 in 1918. Upon that basis the operating income for 1918 would have been \$39,269.19 (\$37,999.19 plus \$1,270.00) and the book value, \$830,591.96 (\$660,591.96 plus \$170,000.00), so that even with the extension constructed and in operation, the plaintiff-in-error would have received a net return of 4.72 per cent. upon the book value of its property.

The undepreciated book value of plaintiff-in-error in 1919 was \$695,197.09 (R. 326, Ex. 35). But the appraisal made by the Commission's Engineers showed the value of the property to be but \$580,527 as of December 31, 1919 (R. 260-1; Ex. 32, R. 306).

It is true that in 1919 the company's Net Operating Income was \$1,799.93 as shown by its annual report (R. 340, Ex. 35). But that small income was largely due to the action of the Brooklyn Union Gas Company in increasing the price for gas supplied to the plaintiff-in-error from 50¢ to 65¢ per M. cubic feet (R. 172-3). In that same year the Brooklyn Union Gas Company also increased the rate of

interest charged on its open account with the plaintiff-in-error from 3 per cent. to 6 per cent.

The plaintiff-in-error is but a mere distributing agency of the Brooklyn Union Gas Company (R. 3445).

"After a consideration of the testimony taken and the exhibits introduced at said hearing and of the matters appearing in the said record" the Commission on April 20, 1920, approved of the opinion written by the Deputy Commissioner who had conducted the hearing and adopted the order directing the extension (R. 14; Return to Writ of Certiorari; for opinion, see R. 7-8).

A rehearing having been denied (R. 9) the company obtained a writ of certiorari to review the determination.

The Appellate Division for the First Department, on November 17, 1922, unanimously dismissed said writ and confirmed the Commission's order, chiefly upon the authority of the decisions of the Court of Appeals and of this Court in *People ex rel. New York and Queens Gas Co. v. McCall*, 219 N. Y. 84, 245 U. S. 345 (R. 345).

On May 9, 1923, the Court of Appeals affirmed unanimously the order of the Appellate Division (R. 348-9).

On June 1, 1923 an order was made allowing a writ of error which was issued on June 5, 1923 (R. 355-7).

Since the writ of error was allowed in this case, the plaintiff-in-error has constructed transmission and distribution mains in and is now actually serving, two of the communities named in the Commission's order, and has constructed transmission and/or distribution mains in the territory adjacent to the other communities named in that order.

POINT 1.

The writ of error should be dismissed because no actual controversy exists.

It appears from records in the files of the defendant-in-error that the plaintiff-in-error is now actually serving with gas the communities of *Locust Manor and Locust Lawn*—which are two of the five places named in the Commission's order—and also the communities of St. Albans (including St. Albans Heights) Jamaica Junction *and the locality immediately adjacent to and north of Springfield*. The gas mains have been constructed by the plaintiff-in-error to and through those communities within the past fifteen (15) months as part of an existing plan to give gas service to the so-called Springfield area.

As part of that plan there has also been constructed within the same period a twelve-inch (12") transmission main from New York Avenue and Platt Street (which was the southerly terminus of the transmission main when the Commission's final order was made) along New York Avenue, Locust Avenue, Rockaway Boulevard, Farmers Avenue and Central Avenue, which main system constitutes the circulating arteries or large feeder mains from which the sections contiguous thereto are to be supplied.

When the Commission's order was made, the testimony indicated that the nearest suitable transmission main for serving the Springfield territory was at New York Avenue and Platt Street, which is about 2.45 miles distant from Springfield Road and Merrick Road, which intersection lies in the northerly portion of Springfield (R. 154, 155). At the present time the transmission main on Farmers Ave-

nue lies less than one-half mile away from that intersection, and there are also distribution mains located much nearer in the territory lying immediately north of Springfield.

South Jamaica Place can readily be supplied from the new twelve (12") inch transmission main on Farmers Avenue. There is also a similar sized main along Locust Avenue, now terminating at a short distance east of the railroad tracks which, it would seem, would be also suitable for supplying South Jamaica Place.

Since the writ of error was issued herein the gas company has constructed about *thirty* (30) miles of mains through the territory south and east of Jamaica, although the Commission's order directing the extension required the construction of a little over *sixteen* (16) miles.

The real question in issue was whether the gas company should extend its mains so as to serve the inhabitants of Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton. As the gas company has extended the mains to Locust Manor and Locust Lawn and is actually serving those two sections, it is obvious that as to them "an affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other" (Brownlow v. Schwartz, 261 U. S. 216, at 217). With respect to the three other communities it will no doubt be admitted that the gas company is going to continue its construction program for the area in question, and to proceed diligently to extend the mains so as to serve those sections within a reasonable time. So that at the present time there is no actual controversy, involving real and substantial rights.

Where no such controversy exists it has been held repeatedly that the case will be dismissed. A few of such decisions are:

Mills v. Green, 159 U. S. 651, 653;

Little v. Bowers, 134 U. S. 547, 557-9;

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This Court has declared that it has no power to decide moot questions or abstract propositions, or to declare for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it.

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Even where the plaintiff-in-error "felt coerced" into compliance, the writ of error will be dismissed.

American Book Co. v. Kansas, 193 U. S. 49, 52.

This Court has also said "We conclude that in the exercise of our appellate jurisdiction over the courts of the several States we are not absolutely confined to the consideration and decision of the Federal questions presented, but as a necessary incident of that jurisdiction are authorized to inquire whether by some intervening event those questions have ceased to be material to the right disposition of any particular case, and to dispose of it in the light of that event."

Gulf, Col. & S. F. Ry. v. Dennis, 224 U. S. 503, 508-9.

In view of the existing circumstances and foregoing decisions it is respectfully submitted that the writ of error should be dismissed.

POINT II.

The courts below in reviewing the order of the Commission in this case followed properly the principles of law stated in *People ex rel. New York and Queens Gas Co. v. McCall*, 219 N. Y. 84, and 245 U. S. 345, to-wit: The courts have no authority to substitute their judgment for that of the Commission as to what is reasonable in a given case, but are limited to determining whether the action complained of was arbitrary or capricious and for that reason unlawful.

The real and controlling question before the Appellate Division was whether the order of the former Public Service Commission of the First District was "reasonable" under the decision in *People ex rel. New York and Queens Gas Co. v. McCall*, 219 N. Y. 84, affirmed 245 U. S. 345, commonly called the *Douglaston* case. In that case the former First District Commission had directed the gas company to extend its gas mains and services so as "reasonably to serve with gas" the community of Douglaston in the Third Ward of the Borough of Queens, City of New York. That order, like the one in the instant case, was made under subdivision 2 of Section 66 of the Public Service Commission Law, which empowers the Commission

"to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities."

When the order came before the Appellate Division, First Department, for review on certiorari that Court stated that it had "no doubt" that it had the authority to review generally the reasonableness of the order of the Public Service Commission, and upon such review found the order unreasonable and annulled it (171 App. Div. 580).

The Court of Appeals, however, in reversing the lower Court, held that *the courts, in reviewing the action of the Commission, have no authority to substitute their judgment as to what is reasonable in a given case for that of the Public Service Commission, but are limited to determining whether the action complained of was capricious or arbitrary and for that reason unlawful* (219 N. Y. 84).

Later a motion for a reargument was made. In support of that motion many other corporations were permitted to intervene, including this plaintiff-in-error. The motion for a reargument was denied (219 N. Y. 681), and the case was carried by writ of error to this Court which, in an opinion handed down on December 10, 1917, said (245 U. S. 345, 347):

"The Court of Appeals of New York decided that the Public Service Commission was created to perform the important function of supervising and regulating the business of public service corporations; that the state law assumes that the experience of the members of the Commission especially fits them for dealing with the problems presented by the duties and activities of such corporations; that the courts in reviewing the action of the Commission *have no authority to substitute their judgment as to what is reasonable in a given case for that of the Commission, but are limited to determining whether the action complained of was capricious or arbitrary*

and for this reason unlawful; and that it was clearly within the power of the Commission to make the order which is here assailed.

This interpretation of the statutes of New York is conclusive, and the definition, thus announced, of the power of the courts of that State to review the decision of the Public Service Commission, based as it is in part on the decision in *Interstate Commerce Commission v. Illinois Central R. R. Co.*, 215 U. S. 452, 470, differs but slightly, if at all, from the definition by this court of its own power to review the decisions of similar administrative bodies, arrived at in many cases in which such decisions have been under examination. Typical cases are: *Baltimore & Ohio R. R. Co. v. Pitcairn Coal Co.*, 215 U. S. 481-494; *Kansas City Southern Co. v. United States*, 231 U. S. 423, 443-4; *Louisiana R. R. Commission v. Cumberland Tel. & Tel. Co.*, 212 U. S. 414, 420-2; *Interstate Commerce Commission v. Union Pac. Railroad Co.*, 222 U. S. 541-547, and *Cedar Rapids Gas Co. v. Cedar Rapids*, 223 U. S. 655, 668.

It is the result of these and similar decisions, that while in such cases as we have here this court is confined to the federal question involved and therefore has not the authority to substitute its judgment for that of an administrative commission as to the wisdom or policy of an order complained of, and will not analyze or balance the evidence which was before the Commission for the purpose of determining whether it preponderates for or against the conclusion arrived at, yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the federal constitutional right claimed has been denied, as, in this case, whether there was such a want of hearing or such arbitrary or capricious action on the part of the Commission as to violate the due process clause of the Constitution."

After calling attention to the fact that the Gas Company appeared at the hearing before the Commission, cross-examined witnesses, introduced testimony and argued the case, this Court expressed its agreement with the Court of Appeals of New York "in concluding that the action of the Commission complained of was *not arbitrary or capricious, but was based on very substantial evidence*, and therefore that, even if the courts differed with the Commission as to the expediency or wisdom of the order, *they are without authority to substitute for its judgment their view of what may be reasonable or wise.*"

To the same effect is *Brooklyn Heights R. Co. v. Straus et al.*, 245 Fed. Rep. 132. In that case bills in equity were filed asking that an order of the Commission requiring the complainants to purchase 250 additional cars at an estimated cost of about \$2,500,000 be adjudged to be illegal and void and that the Commissioners, defendants, be enjoined from enforcing the order. Motion for injunction *pendente lite* denied. The court said (245 Fed. Rep., at p. 135):

"As to the last objection which the complainants make, it may be admitted that an order of the commission made without consideration or without any evidence at all or without a hearing, requiring the company to increase its equipment, might amount to a taking of its property without due process of law. But the parties have submitted to us the record before the commission which resulted in the order complained of. *We have examined it, not for the purpose of seeing whether we agree with the conclusion reached, but to determine whether that conclusion was the result of a fair hearing upon proofs with a full opportunity to the companies to offer proofs, and we think it was.* If the complainants thought, as they now contend, that other and different evidence

should have been considered by the commission, it lay upon them to offer it at the hearing.

The prayer for an injunction *pendente lite* is denied."

The decisions of the Court of Appeals and of this Court in the *Douglaston* case, *supra*, have been followed not only in the instant case but uniformly in other cases in the State of New York involving orders made by the Commission.

Matter of New York Central Railroad Company,
177 App. Div. 444, 447;

City of Rochester *v.* Rochester Gas & El. Corp.,
233 N. Y. 39, 49;

People *ex rel.* Pavilion Natural Gas Co. *v.* Public
Service Commission, 178 App. Div. 937;

Matter of Pennsylvania Gas Co. *v.* Public Ser-
vice Commission, 211 App. Div. 253.

In *People ex rel. Pavilion Natural Gas Co. v. Public Service Commission*, 178 App. Div. 937, the Appellate Division sustained an order of the Public Service Commission directing the relator to extend its gas mains from the Village of Moscow to a certain farm located outside the village, apparently for the benefit of that farm alone. The dissenting opinion in that Court proceeded upon the theory that the order of the Commission was unreasonable and arbitrary, but the order of that Court sustaining the order of the Commission was unanimously affirmed by the Court of Appeals (223 N. Y. 578).

The plaintiff-in-error urged in the courts below and now urges as one of the assignments of error that in cases of this character the courts must make their determination

upon their own independent judgment as to the facts and the law. In support of that contention the case of *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287, is relied upon. The opinion in that case upon that question has been recently considered in *Matter of Pennsylvania Gas Co. v. Public Service Commission*, 211 App. Div. 253, wherein it was contended that the order of the Commission fixing a rate for gas confiscated the company's property contrary to the Fourteenth Amendment, and that the petitioner was thus entitled to have the question of confiscation determined by a court exercising its own independent judgment as to both the facts and the law. After pointing out that this Court had approved the practice of the courts of New York in certiorari proceedings "in as recent a case" as the *Douglaston* decision, the Appellate Division said (211 App. Div. 253, 257-8):

"In *Ohio Valley Water Co. v. Ben Avon Borough* (*supra*) the United States Supreme Court was considering the law of Pennsylvania as construed by its highest court. The real underlying question in that case was whether the Supreme Court of that State had ruled as a matter of statutory interpretation that the sole method of challenging the validity of such legislative order under the Pennsylvania statute was by the appeal had in that case, to the exclusion of a bill in equity to enjoin enforcement, the unrestricted remedy commonly pursued in such cases. Taking into consideration certain opinions by the State Supreme Court which seemed to indicate that 'all objections to the Commission's orders must be determined upon appeal', and taking into consideration the State statute as a whole, the United States Supreme Court was unable to say that a certain other specified section of the local statute

'offered an opportunity to test the order so clear and definite that plaintiff-in-error was obliged to proceed thereunder or suffer loss of rights, guaranteed by the Federal Constitution.' Since the State Supreme Court had in such circumstances ruled, in effect, that in such exclusive remedy of 'appeal' the jurisdiction of the court 'stopped short of what must be plainly entrusted to some court in order that there may be due process of law',—'an adequate judicial hearing as to confiscation,' the judgment of the Supreme Court of Pennsylvania was reversed and the cause was remanded there with instructions to take further action not inconsistent with the opinion of the United States Supreme Court. The action suggested was that the State court, in the exercise of its power finally to construe laws of the State, should re-examine the local statutes; and the holding was that the challenged order was invalid only in the event that the court below failed to definitely indicate a construction of the local law which would make available an adequate judicial hearing as to confiscation. *No such condition of statute or statutory construction exists in New York State so far as we can see. There has been no statute or decision of the Court of Appeals prescribing that certiorari is the exclusive remedy in this State whereby the Commission's orders may be challenged because confiscatory. There is no statute or decision in this State which we can find which does not leave open to the company, besides the limited review by certiorari, the right to resort to a suit for injunction either in the State or Federal court.* The fact is that no difficulty has been experienced in the past in pursuing such a suit in either State or Federal court when challenging the validity of a legislative act or order of this nature, to enjoin its enforcement (*Public Service Comm. v. Brooklyn Borough Gas*

Co., 189 App. Div. 62; *Prendergast v. New York Telephone Company*, 262 U. S. 43; *Belt Line R. Corp. v. Newton*, 273 Fed. 272). We have no doubt that this common practice, giving an unrestricted remedy, is and has been available to the company in this State in addition to the limited review by certiorari, which distinguishes the decision in *Ohio Valley Water Co. v. Ben Avon Borough* (*supra*). We conclude it to be our duty to follow the practice approved in *People ex rel. N. Y. & Queens Co. Gas Co. v. McCall* (*supra*) which we have adopted in our previous decision in this case and in cases of a like nature. In such cases we do not substitute our judgment upon the facts for that of the Commission but we exercise the power to review questions of law and we do not examine the facts further than to determine whether there was substantial evidence to sustain the order."

It must be remembered that in the *Douglaston* case this Court was considering the very statutes now involved and that it then decided that *the interpretation of Subdivision 2 of Section 66 of the Public Service Commission Law and of Section 2140 of the Code of Civil Procedure (now Section 1304 of the Civil Practice Act) by the Court of Appeals was conclusive upon this Court, and that due process of law was afforded under them*, for this Court approved the principles laid down by the Court of Appeals "that the courts in reviewing the action of the Commission had no authority to substitute their judgments as to what is reasonable in a given case for that of the Commission, but are limited to determining whether the action complained of was capricious or arbitrary and for this reason unlawful; and that it was clearly within the power of the Com-

mission to make the order which is here assailed'' (245 U. S. 345, 347, 348).

That the question at issue in cases of this character is one of fact was expressly recognized by the plaintiff-in-error's senior counsel, Mr. W. N. Dykman, when in his brief submitted in behalf of this relator upon the motion for re-argument before the Court of Appeals in the *Douglaston* case, he said on page 6 of that brief:

"What is 'reasonable' in any given test depends on the consideration of the particular facts and circumstances of the case. There may be no dispute as to those facts. Nevertheless, the inference to be drawn whether the improvements and extensions ordered should be made is plainly a question of fact";

and on page 7:

"In the very case of *State v. Great Northern Railway Co.* (*supra*), it was said: 'The pecuniary loss or profit to the carrier in executing the particular order is an important criterion in determining the reasonableness of the order but it is not the only one.' That is undoubtedly true; and the determination of the relative weights of that consideration on the one hand and the benefit that is to be derived by the public on the other hand, whether the demand for gas will increase, all these are to be weighed and the conclusion to be derived therefrom is a conclusion of fact, not of law."

The question was whether, upon a consideration of all the relevant facts, the Commission exercised a reasonable judgment in ordering the extension. The Appellate Division could not set aside the Commission's order unless it was an arbitrary or capricious order and for that reason

unlawful. The Appellate Division had to review the Commission's determination under Section 1304 of the Civil Practice Act (formerly Section 2140 of the Code of Civil Procedure) in the light of the *Douglaston* decision, and, in considering the evidence, that Court had to determine whether there was "such a preponderance of proof against the existence of the facts found that the verdict of a jury affirming the existence thereof would be set aside by the court as against the weight of evidence" (fol. 1730).

The rule as to when a verdict of a jury will be set aside as against the weight of evidence is laid down in the leading case of *Beckwith v. N. Y. Central R. R. Co.*, 64 Barb. 299, as follows (syllabus):

"It is not enough to justify a new trial, that had the court sat on the jury, it might have come to a different conclusion from that arrived at by the jury. The finding must be either without evidence or so decidedly against the weight of evidence that it must have been brought about by either *partiality, corruption or gross ignorance.*"

In *Hospital Supply Co. v. O'Neill*, 10 Misc. 655, aff'd 155 N. Y. 634, the Court in its opinion, by Pryor, J., said (p. 657):

"It is not enough for a solution of the question in favor of the appellant that our conclusion upon the evidence be contrary to that of the jury. We have no authority to substitute our judgment for the judgment of the jury, and to say that proof persuasive with us should have been convincing to them. If that were so, the exclusive jurisdiction of the jury over the facts would be illusory, and their verdict, instead of a finality, would be provisional on the ap-

proval of the Court. In the legal sense, a verdict against the weight of evidence is a verdict so contrary to the preponderant proof *as to startle by its absurdity, or to suggest a suspicion of evil influence.* Unless the verdict be thus infirm in its origin, betraying either no exercise or a perverse exercise of the judgment of the jury, it is a finality beyond the power of the appellate tribunal to disturb."

To similar effect are:

Berkowitz *v.* Consolidated Gas Co., 134 App. Div. 389; *aff'd* 201 N. Y. 512.

Von der Born *v.* Schultz, 104 App. Div. 94.

Brush *v.* Constable, 166 App. Div. 543.

Unless, therefore, the Commission's decision is so obviously against the weight of evidence that it must have been brought about by "partiality, corruption or gross ignorance," the Appellate Division could not have set it aside as an unwise or inexpedient order but only if it was an arbitrary or capricious order and for that reason unlawful.

The Appellate Division has found that there was substantial evidence to uphold the Commission's determination, and in upholding that determination it had to examine the evidence and from such examination must have also decided that the order was *not capricious, arbitrary or unlawful.* It thus followed, we submit, the decision of the Court of Appeals and of this Court in the *Douglaston* case.

POINT III.

The order of the Commission was not arbitrary or capricious, but was based upon substantial evidence.

The plaintiff in error selected *certiorari* as the means of reviewing the Commission's order in the state courts. As there is no statute or decision in New York prescribing that *certiorari* is the exclusive remedy whereby the Commission's order may be challenged, the company cannot now complain of the limited review afforded by that proceeding, even when the claim involved is one of confiscation. (*Matter of Pennsylvania Gas Co. v. Public Service Commission, supra*). The company's claims have been presented to two appellate courts and have been unanimously rejected by both. If this Court decides to examine the evidence to the extent indicated by it in the *Douglaston* decision, it will be seen that the Commission acted upon substantial evidence and not in any arbitrary or capricious manner.

Needs of the Localities.

Springfield and the surrounding sections are residential communities in New York City consisting for the most part of private houses, the average value of which in Springfield was \$6,500 and in Laurelton about \$12,000 (R. 33). In this connection it may be noted that in the *Douglaston* case, this Court thought that houses of an average cost of \$7,500 gave "assurance that the occupiers of them would be probable users of gas."

In 1919 the territory in question had had electric light service for about ten years, water service for about fifteen years and telephone service for about twelve years (R. 34).

The location of the houses in all of the sections was shown on various maps introduced, but for convenience, reference may be made to Exhibit 23, sheet 2 (R. fols. 486-7), on which is represented by black dots the buildings existing on May 25, 1919.

In May, 1919, the number of houses in the five places in question totaled 493, made up as follows (see Company's Exhibit 14, R. 285):

Springfield	272
Laurelton	41
Locust Manor	84
Locust Lawn	39
South Jamaica Place	57

While the hearings were going on thirty-five to forty one and two-family additional houses were constructed in Springfield at an average cost of \$9,000 to \$10,000 (R. 211-12), and, in Laurelton, between fifteen to twenty one-family and three apartment houses, each containing six apartments (R. 210). Inasmuch as between 100 and 140 houses were being erected during the pendency of the hearings in all of the localities named in the hearing order (R. 210), it is reasonable to assume that some of the new houses were in Locust Manor, Locust Lawn and South Jamaica Place. Counsel for plaintiff-in-error in the Court of Appeals accepted 500 houses, out of 625, as representing the number that would have taken gas had the extension been constructed, when ordered.

Many of the houses are piped for gas, Mr. Schaberhorn testifying that approximately 50 per cent. of the houses in Springfield, St. Albans and Rosedale were so equipped, and fully 95 per cent. of those constructed within recent years (R. 45). It is true that St. Albans and Rosedale were not included in the Commission's order, but in view of the company's promise to extend to Springfield it is a fair inference that the majority of the houses piped are located in that place. Another witness said that he was placing gas pipes in five houses, which he was building in Springfield (R. 81). The gas company's own witness, Mr. White, testified that, in his 1915 survey, he had found 289 houses "equipped for gas" (R. 131). The Commission found that "many of the houses in these localities are piped for gas. This would seem to indicate that promises had been made by the Company officials to supply the demand" (R. 7).

All of the sections named in the *hearing* order had been thoroughly canvassed, as a result of which more than 1,000 residents signed cards, on which it was stated "If gas is introduced into my section, I will become a consumer," which cards were received in evidence (R. 44). When Mr. White made his survey in 1915 of some of the localities, the occupants of 534, out of 669 houses, expressed their intention to use gas (R. 131).

According to Mr. Schaberhorn, the whole territory in those parts of Queens and Nassau counties surrounding Springfield, St. Albans and Rosedale is supplied with gas. The same witness told how the lack of gas had affected the sale and rental of property in Springfield and adjoining places; and that in some instances, prospective buyers, when informed of the absence of gas, go to a town seven-

teen miles further out where that commodity can be had (R. 35, 40). But despite the lack of gas, the territory in question developed considerably "in recent years in spite of the lack of gas" (Commission's Opinion, R. 7) even during the period of the World War, *e. g.*, when the men of the gas company made a survey some time in 1915, they found 189 houses in Springfield alone which number had increased to 272 in May, 1919, and proportionate increases in the other places (Exhibit 20, R. 297; Exhibit 14, R. 285).

Gas, if supplied, would be used by many for lighting, heating and cooking and by some for only cooking and heating (R. 35, 45).

Certainly the public need was amply demonstrated by the facts stated above.

Company's Promise to Construct.

The record shows that on October 9, 1916, a committee from the Springfield Citizens' Association, consisting of Messrs. Izor, Schaberhorn, Berthold, Decker, Nostrand and Mills, conferred at *The Brooklyn Union Gas Company's office* with the following officials: Vice-President Staniford, Secretary Jourdan, Assistant Secretary Wogan and Mr. White, Superintendent of Distribution of the Street Department of The Brooklyn Union Gas Company, and its subsidiaries (R. 23, 125).

(a) Testimony of committee's witnesses.

According to Mr. Schaberhorn, the committee was then told that the advisability of extending the gas mains to Springfield had been long under consideration; that the number of houses had been counted, the cost figured out,

and the company was about ready to make the extension which the people could expect in about six months, but that the communities, such as Rosedale, Jamaica Junction and St. Albans should not be told of the promise (R. 24). The same witness testified that, several months later, the committee met Mr. White at Mr. Izor's home in Laurelton where Mr. White explained the delay in carrying out the promise and assured the committee that the work would be under way within two or three months' time (R. 26).

Dr. Berthold, a resident of Laurelton, testified to substantially the same effect (R. 67-70).

(b) Testimony of company's witnesses.

(1) Mr. Izor, a resident of Laurelton, who had been a member of the Gas Committee and who evidently became quite friendly with Mr. White (R. 140-2) was called by reporter's counsel to give his version of the conference at the gas company's office in the fall of 1916 and of some subsequent conversations with Mr. White. The substance of Mr. Izor's testimony, upon direct examination, is expressed in the following question and answer (R. 108):

“Q. Was any promise, at any time, made by Mr. White, or by anybody else, representing the gas company, to you personally, or to you as Chairman of this Committee, that extensions would be made to the locality you represent? A. Not at any definite time.”

This testimony of Mr. Izor cannot be reconciled with the report he, as Chairman of the Gas Committee of the Springfield Citizens' Association, made shortly after Mr. White's visit to his home on May 2, 1917 when the latter addressed the committee. That report, marked Complain-

ant's Exhibit No. 12, *which Mr. Izor swore on cross-examination was a truthful one* (R. 110), is set forth in the Record on pages 110 and 111 and contains, among others, the following pertinent statements:

"Mr. White explained in detail that the pipe *for this extension* had been ordered last November. Owing to the shortage of freight cars and congestion of freight, the foundry has been unable to deliver this pipe. He states, however, that some of it has been received and delivered to Jamaica. They are expecting additional deliveries at any time.

He also stated that the lead necessary to make this extension has been ordered from Omaha, Nebr. * * * *that as soon as sufficient pipe is received to bring the main line down Merrick Road to Springfield Avenue, they will begin work and complete it as soon as possible* * * *

Mr. White states to us that the president of the Brooklyn Union Gas Company called him into his office a short while ago and gave him an order to make this extension as soon as material had been received. So you see Mr. White has the order from the company and will proceed as soon as he has anything to proceed with. He states under present conditions, it would take about 60 days to install this service."

This report, *made at a time when facts were fresh in his mind and which, he swore, was true when made* (R. 110), makes further comment on Mr. Izor's testimony unnecessary.

(2) Mr. Waldron, who is Mr. White's assistant, and who had accompanied Mr. White to Mr. Izor's house in May, 1917, testified that "*Mr. White went into the details of*

*the extension, telling them how we had ordered pipe early in 1916, * * * that at the time it had not been delivered, some of the pipe which might be available for Springfield,"* that Mr. White, in concluding, "told them we were unable to say at that time just what could be done, owing to the conditions that existed, and the way they were changing, owing to the war, which made it impossible to make any definite statement, *but that the matter could again be taken up in six months, when perhaps something more definite could be arrived at*" (R. 87).

(3) According to Mr. White, who is the Superintendent of the Street Department of The Brooklyn Union Gas Company and its subsidiaries, the discussion, *lasting about two hours*, at the gas company's office in October, 1916, might be summarized as follows (R. 125):

"A. (Continuing) The discussion was to the effect that the Woodhaven Company had shortly prior to this meeting been decided against in some rate case, and the rate had been reduced, *and at that time this alone was preventing any construction of an extension in Springfield*, or any other section that covered the great amount of territory that Springfield did."

Regarding the meeting at Mr. Izor's home on May 2, 1917, Mr. White told how he explained to the committee that The Brooklyn Union Gas Company *had ordered quite a quantity of pipe in 1916* but was having trouble in getting deliveries thereof and that owing to the declaration of war by the United States in the preceding months with consequent clogging of freight deliveries, the Government's restrictions on the production of pipe, and the labor situation

being upset, "it was impossible at that time to state when anything could be done" (R. 126-7).

Mr. White also testified concerning his visit to Springfield in March, 1919, when he addressed a public meeting, and "had carefully and patiently shown them just *what the causes for delay were* (R. 130).

That the company's representatives at the meeting at its office in October, 1916, had promised the extension is impliedly admitted by Mr. White when the Springfield committee was told that the plaintiff-in-error had been decided against in a rate case "and at that time this *alone* was preventing any construction of an extension in Springfield" (R. 125). Mr. White referred to an order made by the Public Service Commission for the First District on May 25, 1916 fixing the maximum price of gas to be charged by the Woodhaven Company after July 1, 1916 at 95 cents per thousand cubic feet instead of one dollar, the maximum rate theretofore prescribed by statute, which order was later suspended by that Commission (R. 54).

But this alleged reason (the order reducing relator's rates) was apparently not considered of great moment six months later when on May 2, 1917, Mr. White called at Mr. Izor's house in Laurelton and talked with the Gas Committee. It will be noticed from a reading of pages 126 and 127 of the Record that no mention whatsoever was made then by Mr. White as to the Commission's order. At that time, apparently the *only* reason alleged for the delay in the construction of the extension arose from the conditions caused by the war, the United States having declared war against Germany in April of that year. Indeed, Mr. White in order to show that the officers of the company had au-

thorized his visit, produced a letter marked Complainant's Exhibit No. 13 (R. 112-3), reading as follows:

"April 23, 1917

Mr. Will C. Izor, Chairman,
Springfield Citizens' Association,
Gas Committee,
1 Madison Avenue, New York City.

Dear Sir:

In reply to your communication of the 18th inst. addressed to Mr. J. T. White, Superintendent of our Street Department, in reference to the extension of mains into Springfield sections, *we have been unable, up to the present time, to make the extensions owing to our inability to procure the necessary material, due to the present general war conditions.*

Yours truly,

(Sgd) F. B. JORDAN, Secy.
Woodhaven Gas Light Company."

It is obvious from this letter that the *only* reason then assigned by the company for delaying to construct the extension was "due to the present general war conditions."

There is testimony to the effect that after the conclusion of his talk at the public meeting in March, 1919, Mr. White was accused of bad faith by Mr. Berthold and was asked by the latter if he had not pledged his word of honor to extend gas to Springfield and that Mr. White *answered in the affirmative* (R. 79). This admission is practically confirmed by the testimony of Mr. Waldron, Mr. White's assistant (R. 88), and of Mr. White himself (R. 130).

In addition to the foregoing, there is the testimony of Mr. L. E. Decker, a resident of Springfield for forty-five to fifty

years, who swore that about twenty years previously he and two other residents (whose names he mentioned) had called upon the *president of The Brooklyn Union Gas Company* who "guaranteed that in five years we would have gas" (R. 74).

Without even considering the testimony of Messrs. Schaberhorn and Berthold, we submit that the testimony of the company's witnesses, Izor, White and Waldron, together with the letter from the company's secretary heretofore quoted, establish that the residents of Springfield and intervening territory received promises from the officials of the relator and its parent company that the gas mains would be extended so as to serve them, and the company's officials in promising the extension must have thought that the proposition would prove a paying one within a reasonable time.

We have no doubt that this Court will find that the evidence referred to entirely justified the Commission's finding regarding the promise and the Appellate Division's confirmation thereof. Indeed, appellant's counsel in the Court of Appeals seemed to concede that the company's representatives said they would extend the gas mains to Springfield, but they attempt to limit the promise to Springfield alone. They then said:

"There is evidence to show that the gas men said they had surveyed the field, had pipe on hand, money already appropriated and intended to extend to Springfield. Explicitly they said they would go nowhere else."

They now say (Brief, p. 26):

"The extension ordered is not the extension discussed, viz., to Springfield."

Apparently counsel have overlooked the evidence showing that the plan then contemplated for carrying the transmission mains to Springfield provided for building through Locust Manor, Locust Lawn and South Jamaica Place (which is the same as Jamaica South) and that Laurelton was plainly included within the promise.

Mr. Schaberhorn testified as to the route which the promised extension was to follow (R. 24-5):

"We were told it was coming down New York Avenue. It would have to start at the car barns in Cedar Manor, because the gas company made all their arrangements to start from that particular point. They would come down New York Avenue to Locust Avenue, across Locust Avenue to Merrick Road, and out Springfield Avenue, and from that point they would run smaller lines, branch out to take in the houses on the side streets.

Q. On what side streets—in Springfield? A. *In Springfield, and on the way to Springfield.*

Q. That would not take in Rosedale? A. That would not take in Rosedale.

Q. Or St. Albans? A. Or St. Albans.

Q. Would it take in Jamaica south? A. *It would take in Jamaica south."*

That the promise also covered Laurelton is plain because (a) that place is "included in Springfield" (R. 28); (b) some of the most active members of the Gas Committee to whom the promise was made lived in Laurelton, viz., Mr. Izor, who acted as the Committee Chairman and at whose home some of the conferences with Mr. White were held; Dr. Berthold and Mr. Holmes; and (c) Mr. White's explanation of his admonition not to spread propaganda as "it would be much easier to handle Springfield and

Laurelton than to have the whole place coming down on us like an avalanche" (R. 129).

It is submitted that the above resumé of the evidence refutes the claim that the promise was limited to an extension to Springfield.

The appellant's counsel refers to the case of *People ex rel. Loughran v. Bd. of R. R. Comrs.*, 158 N. Y. 421, as an authority for their statement that the Commission has no power to enforce a promise. It should be noted that in the case cited the Court held that the contract which contained the promise, was properly received in evidence by the Railroad Commission (158 N. Y. 430). In the *Douglas-ton* case this Court considered "significant" the gas company's offer to construct, provided the residents of Douglaston would advance \$10,000 to be returned in semi-annual credits upon the amount of gas consumed (245 U. S. 350).

We do not claim that the Commission had power to enforce the promise made in this case, but merely that the promise was one of the matters to be taken into account in determining whether the extension was reasonable. The promise when considered in connection with the testimony showing that the *principal purpose in ordering large quantities of pipe in October, 1916 was to fulfill that promise* is important, because it was a recognition by the gas company of the reasonableness and propriety of the extension, and of its probable profitableness within a reasonable time.

Pipe Delivered at Jamaica.

That affirmative steps were taken shortly after the conference at the gas company's office on October 9, 1916 to get the necessary material to build the extension is indicated by the testimony regarding the proposed use of cer-

tain pipe ordered October 27, 1916 and subsequently delivered at Jamaica (R. 136, 138).

That pipe was ordered apparently by the *Brooklyn Union Gas Company*, which purchases all the materials used by its subsidiary companies (R. 103-4, 144), and was intended for the use and some of it was used for the Fourth Ward Gas Companies, including, of course, the plaintiff-in-error (R. 138, see Exhibit 19, R. 292).

According to Mr. Schaberhorn, Mr. White had told him that this pipe was delivered "for the purpose of making an extension to Springfield", that "we were assured that they were pipes to make the extension" (R. 32).

Mr. Henning, a resident of Springfield, testified that in *March, 1919*, he had a conversation with Mr. White at the public meeting, when the latter said that the pipe was intended "for the mains to Springfield" (R. 71).

Mr. Izor, the company's witness, *also got the impression from Mr. White that the pipes had been ordered for the extension*: that "some of them were in Jamaica; the rest had been ordered" (R. 107). See also this witness' statement in his report regarding the pipe, lead and yarn ordered by the gas company (R. 110-11).

Another witness for the company, Mr. Holmes, an accountant employed by the Queensboro Gas & Electric Company, and who had been a member of the Springfield Gas Committee, also understood that some of the pipe that might be used for the extension had been supplied, or purchased (R. 119).

Mr. Waldron, Mr. White's assistant, quoted Mr. White telling the Committee at Mr. Izor's home, "How we had ordered pipe early in 1916, pipe ordered early in 1916, that at that time had not been delivered, *some of the pipe which might be available for Springfield*" (R. 87).

In view of such testimony the Commission was justified in saying (Opinion, R. 7): "I am satisfied that the pipe in question was ordered primarily for the purpose of constructing gas mains to Springfield."

Cost of the Extension.

The Commission's engineer, Mr. Mitchell, submitted three estimates or studies from which it appears that the maximum cost of the extension, as of May, 1919, would have been about \$170,000, which figure counsel for plaintiff-in-error accepted for the argument in the Court of Appeals. In Study 1, Mr. Mitchell assumes that "all sections covered by the Gas Company's map and Estimates are to be served"; in Study 2 that "only the sections covered by the map of Petitioners are to be served"; and in Study 3 that only certain parts of seven sections are to be served, including Springfield, Locust Manor, Locust Lawn and South Jamaica Place, but not Laurelton. Mr. Mitchell's estimates with the maps showing the layout for Studies 2 and 3 were marked Commission's Exhibit No. 23, Sheets 1 to 5 (see R. 263; fols. 484-496).

Examining Study 2 for Mr. Mitchell's estimate for supplying Laurelton and Study 3 for supplying the other four places, we find the following:

<i>Location</i>	<i>Number of Distribution Houses</i>	<i>Meters and Mains</i>	<i>Services</i>	<i>Total</i>	<i>Feet of Main</i>
Springfield	249	\$49,803.88	\$5,286.27	\$55,090.15	29,384
Laurelton	41	19,661.80	870.43	20,532.23	13,533
Locust Manor	78	31,083.71	1,655.94	32,739.65	17,681
Locust Lawn	34	6,461.93	721.82	7,183.75	5,094
South Jamaica Place	35	9,242.99	743.05	9,986.04	6,709
	437			\$125,531.82	72,401 = 13.71 miles
Transmission and Governor				45,016.95	12,973 (See Company's Ex. 14, R. 285).
				\$170,548.77	85,374 = 16.17 miles

In considering the cost of the extension the following pertinent facts should be borne in mind:

1. The \$170,000 included \$45,016.95 for a 12-inch transmission main when a much smaller main would be more than sufficient to take care of the gas requirements of the five communities;

2. the prices used in the estimates of cost were those of a period when prices were exceptionally high;

3. the cost of the extension would have been materially reduced if the pipe ordered in October, 1916 for constructing the extension had been used, and

4. if an offer made by a corporation developing a part of Laurelton had been accepted, the gas company would have been assured of a net return of at least $2\frac{1}{2}$ per cent. on an investment of \$170,000.

1. The sum of \$45,016.95 was to cover the cost of a 12-inch transmission main. However, such a large trunk line would not be necessary to properly supply Springfield and Laurelton, and their reasonable future needs, but would be only necessary if *all* of the fifteen sections mentioned in the hearing order were to be served, including the outlying places like St. Albans *and their future requirements* (White, R. 189-90).

Conceding that it may be advisable from an engineering standpoint to lay out a proposed system sufficiently comprehensive to provide for supplying these fifteen communities and their future requirements, it seems very unjust to attempt to impose upon prospective consumers in the five places named in the final order the burden of carrying the

charges on the cost of the construction of a 12-inch transmission main only needed *if and when all of the fifteen places are to be served.*

Such prospective consumers should not be called upon to pay a return upon more of an investment than is strictly necessary to serve their immediate needs. The former First District Commission decided that the company should be directed to serve only five out of fifteen communities, and if the company considers it necessary to provide a twelve inch trunk main for serving all fifteen communities, the company must look to such future business for its return upon so much of the investment in the transmission main which is not and will not be required to take care of the demands of Springfield, Laurelton, Locust Lawn, Locust Manor and South Jamaica Place.

That there is a very substantial difference in the cost of laying 12-inch pipe, as compared with the cost of laying 8-inch or 6-inch pipe, appears clearly from Exhibit 20 (R. 294-5), where such costs (based on January, 1919 market quotations for material costs, and February, 1919 labor rates paid; see end of Exhibit 20, R. 297) were shown as follows:

12-inch pipe.....	\$3.8861	per	foot
8-inch pipe.....	2.2702	"	"
6-inch pipe.....	1.7811	"	"

2. It should also be remembered that the unit prices used by both Mr. White and Mr. Mitchell were those of a time when labor and material costs were very high because of the unsettled conditions caused by the World War. Both engineers had used May, 1919 prices in preparing their

estimates when the cost of pipe was \$57 a ton (White, R. 151). Although there were fluctuations both before and after that time, it is pertinent to note that the May, 1919 pipe cost was greatly in excess of the cost of the same material in October, 1916, when large quantities of pipe were ordered. Exhibit 19 (R. 291-2) shows that the cost of 4-inch pipe delivered (not the cost of laying) was \$35.50 per ton, 8-inch pipe \$32.50 per ton, and 12-inch pipe \$31.50 per ton. That such pipe, or at least some of it, was intended for the Springfield extension, we submit, has been established by the testimony heretofore pointed out. Considering the relations existing between the parent company and its subsidiaries, it is no answer to say that the pipe was the property of The Brooklyn Union Gas Company.

Even in July, 1919, Mr. White testified that of the pipe ordered in October, 1916, 31,000 feet of 12-inch pipe remained on hand together with 562 lengths (6,744 feet) of 8-inch pipe and some of the smaller sizes (Exhibit 19, R. 291-2); and that only 27,218 feet would be needed for the extension to Springfield (R. 154). Of that quantity, 12,973 feet would be required for the transmission main from Cedar Manor to Springfield (Ex. 14) and 14,245 feet for the distribution main in Springfield (Ex. 23, Sheet 1).

3. It must be remembered that the 12-inch pipe which was on hand in July, 1919 only cost the company \$31.50 per ton delivered at Jamaica (Exhibit 19); 27,218 feet of 12-inch pipe (74 lbs. per foot) at this price would cost but \$31,722.58 as against \$57,402.76 representing the cost of a like quantity at \$57 per ton (the May, 1919 figure), or a difference of \$25,680.18.

Evidently the Deputy Commissioner had such a situation in mind when he said (R. 7) :

“Had the pipe been used by the Company, at the time it was ordered and promised, the Company would have saved a considerable amount of money in making its extensions.”

4. Offer of Land Credit Corporation: In connection with this question of the cost of the extension and the prospective return, it is pertinent to call the Court's attention to a letter, dated December 19, 1919, addressed to the then Public Service Commissioner by the Land Credit Corporation (R. 215-16). The letter stated that said corporation had been negotiating for some time with the plaintiff-in-error for an extension of gas to Laurelton where it had under way, through another company, a large and active development; that it had made a proposal to the gas company whereby “*we stand ready to guarantee them against loss on this extension*”; that, in order to show its good faith, when the gas company accepted the Commission's order and actually began work on the extension, the Land Credit Corporation would deposit in trust

“the sum of \$35,000.00, to be advanced in accordance with the progress of the work as a loan to the Gas Company for a period of ten years, at interest at 5% per annum, and in addition we will execute in such form as will be satisfactory to you, a guarantee of a net return of 6% on the cost of the transmission main to Laurelton and the cost of the distribution of service actually laid in our property.

According to present estimates, this will call for

a total expenditure of \$69,038.23 if a distribution system is laid in the Laurelton properties to serve the present needs. Our proposal is therefore limited to a loan of \$35,000.00 in accordance with the terms here stated.

Through one of the subsidiary companies, we are prepared to take the contract for construction at these figures, and put in charge thereof one of the best public utility engineers in this country."

If plaintiff-in-error had accepted this offer, it would thus have been guaranteed a net return of 6 per cent. on \$69,038.23 or \$4,142.29 per annum, or a net return of about 2½ per cent. on \$170,000 representing approximately Mr. Mitchell's estimated cost of supplying the five localities, including his figure of about \$45,000 for a twelve-inch transmission main.

It seems fair to assume that the Commission considered as *one* of the elements, and properly so, the unwillingness of the gas company to construct the extension even when it was assured of a net income of 2½ per cent. upon the extension by the Land Credit Corporation.

Property of Plaintiff-in-Error and Operating Results in 1918 and 1919.

The Commission had before it evidence concerning the value of the company's property (which consists mostly of mains, services and meters) in the form of its book value as reported to the Commission, and in the estimates of two engineers, Mr. Randolph for the company, and Mr. Mitchell, one of the Commission's engineers:

According to its annual reports for 1918 and 1919, the company had a book value as follows (Ex. 34, R. 310; Ex. 35, R. 327):

1918	\$660,591.96
1919	695,197.09
Mr. Randolph's estimate of the cost to reproduce, new, as of June 30, 1919 (exclusive of going value).....	\$1,665,031.45
(Exhibit 27, R. 303.)	
Mr. Mitchell's estimate showed revised total reproduction as of December 31, 1919	\$681,809.00
Accrued depreciation	101,282.00
Normal reproduction cost less depreciation	580,527.00
(Exhibit 32, R. 306.)	

It may be well to point out here how the basis of the appraisal figure of \$580,527, which amount counsel for the plaintiff-in-error seem to accept for the purpose of their argument before this Court (Brief, p. 4).

In the proceeding before the First District Commission, which resulted in the order of May 25, 1916 prescribing a 95-cent gas rate for relator and the other two Brooklyn Union subsidiaries supplying the Fourth Ward of Queens (see Opinion of Commission, 7 P. S. C. Reports, 1st D. N. Y. 129; parts of which opinion were used by relator's counsel as a basis for its Exhibit 18, R. 185), appraisals of the physical properties, excluding land, were submitted by Mr. Randolph and Mr. White for the companies, and by Mr. Hine, then the Commission's gas engineer. In fixing a rate base for the three companies in that proceeding, the Commission, while allowing a little more for meters than

Mr. Hine, otherwise *accepted* his appraisal, saying (7 P. S. C. Reports, 1st D. N. Y. 129, 134-5):

“As regards other items, a comparison of actual costs of construction for recent years, with the estimated cost based on various unit figures submitted, lead to the conclusion that *Hine's valuation must be taken as the maximum amount for the cost of reproduction new.*”

In this case, Mr. Mitchell, the Commission's engineer, took, as a basic figure, Mr. Hine's appraisal of the company's physical property as of December 31, 1913 (Exhibit 33, R. 307), plus an extra allowance for meters, in conformity with the Commission's finding, subtracted the retirements and added the cost of fixed capital items from December 31, 1913 to December 31, 1919, recomputed the depreciation at the annual rate of 1.66 per cent. (which was Mr. Hine's figure used by the Commission), made an additional allowance for overheads and working capital, using as a basis the Commission's method in the rate case, and estimated the normal reproduction cost of the company's property on December 31, 1919, less depreciation, at the sum of \$580,527 (R. 260-1; Ex. 32, R. 306).

As that appraisal figure of \$580,527 represented the value of the company's property at the end of 1919, it is a fair inference that the company's property was worth less in 1918. But even assuming that in the latter year it had a value of \$580,527,—as its operating income was then \$37,999.19,—it enjoyed a return of 6.54 per cent. Upon the assumption that 500 houses in the five communities would have taken gas and thus added \$1,270 to the operating income of \$37,999.19, and that the extension had been constructed at a cost of \$170,000 (which assumptions were

accepted by the counsel for plaintiff in error before the Court of Appeals for the purpose of argument), the value of the property would have been increased to \$750,527 (\$580,527 + \$170,000) with a resultant return of 5.23 per cent.

According to its 1918 annual report, the company's fixed capital, *undepreciated*, was \$584,697.88 and its floating capital \$75,894.08, making a grand total of \$660,591.96 (Exhibit 34, R. 310). As it reported for the same year that its operating income applicable to its corporate property for the payment of dividends or interest on bonds was \$37,999.19, which was an increase in such income of \$13,415.35 over the preceding year (Exhibit 34), there was thus a net return of 5.75 per cent. on its undepreciated book value of \$660,591.06.

The company showed by Exhibit 15 (R. 286) that even if it had served 982 additional consumers throughout the *fifteen* communities in 1918, an operating income of \$26,872.07 would have remained, or a return of 4.07 per cent, upon said book value.

It is respectfully submitted that the returns indicated above on either the Commission's estimate or the Company's own book value in the last year of the World War can hardly justify any complaint as to the plaintiff's-in-error operating results in 1918, especially in view of what this Court said in *Milwaukee Electric P. & L. Co. v. Milwaukee*, 252 U. S. 100, 105, quoted under the next point.

In 1919 there was a net operating income of only \$1,799.93 as appears from its annual report to the Commission (Exhibit 35, R. 327). There was thus in the record before the Commission a figure indicating that the plaintiff-in-error had an inadequate return for one year. But this

poor showing for 1919, in contrast with its operating income of \$37,999.19 for 1918, was due almost entirely *to the action of the parent company in raising the price beginning January 1, 1919, for gas supplied to the plaintiff-in-error* from 50 cents to 65 cents per thousand cubic feet (R. 172-3).

In 1919 the parent company not only raised the price for gas but also increased the rate of interest charged on the open account with plaintiff-in-error from 3 per cent. to 6 per cent. as the following statement on page 4 of the latter's annual report to the Commission for 1919 shows:

“The rate of interest paid on the open account with the Brooklyn Union Gas Company was changed from three per cent to six per cent, effective January 1, 1919.”

(The above-quoted statement does not appear in the Printed Record which contains only a part of the 1919 annual report, all of which was received in evidence without objection as Commission's Exhibit 35. It was stipulated, however, that any part of an exhibit not reproduced in full might be used in the briefs or upon the argument.)

Considering the relations existing between the two companies, it would not seem to be essentially different to the parent company whether it receives from the plaintiff-in-error adequate remuneration through the price charged for gas sold, in an increased rate of interest on moneys loaned or in the form of operating income applicable for dividends. Assuming, however, that the increase from 50 to 65 cents was justified because of increased labor and material costs, will an inadequate return for one year in abnormal times be considered sufficient to invalidate an order requiring an extension? Even in a *rate* case, confiscation is not shown

unless unreasonably prolonged (*Darnell v. Edwards*, 244 U. S. 564) and a year is not necessarily determinative of the validity of a rate attacked as confiscatory (*Municipal Gas Co. v. Public Service Commission*, 225 N. Y. 89, 98); and, as is shown hereinafter, an order like the present must be treated in the light of considerations other than those applicable solely to rate orders.

POINT IV.

The financial burden imposed is but one of the factors to be considered in determining the validity of the order directing the extension.

Substantially all of appellant's brief is devoted to an attempt to prove that the order requiring the extension to the five communities was confiscatory and accordingly invalid. It seems to us that the argument in support of that contention is based upon a false premise, to wit: That the question of the validity of the Commission's order must be determined upon the same principles of law which prevail in a rate case. In such a case, the unreasonableness of an order fixing maximum rates is established if the Court finds that the enforcement of such rates would not provide an adequate return. *But in cases involving compliance with other kinds of orders, the questions of expense and adequacy of return upon the company's property are matters to be considered but do not necessarily control the determination as to reasonableness of the orders attacked.* Those questions must be considered in connection with the

obligations imposed by the acceptance of the franchise, and the public need and the public benefit. Counsel for the gas company would disregard every consideration in the present case save that with respect to the pecuniary loss or profit involved, although as appears from Mr. W. N. Dykman's brief upon the motion for reargument in the *Douglaston* case, it was then admitted that such loss or profit was but one of the factors to be weighed (see p. 16 of this brief).

As to the Company's Duty to the Public.

The plaintiff-in-error was incorporated on September 11, 1871 to manufacture and supply gas for the lighting of streets, avenues, highways, public places and public and private buildings in the town of Jamaica (Exhibit 1, R. 279).

On October 4, 1871, it received the consent of the municipal authorities of the town of Jamaica (the present Fourth Ward of the Borough of Queens) for "laying conductors for conducting gas in and through the public streets and highways" thereof (R. 281). On March 15, 1897, as part of the secondary franchise granted October 4, 1871, the town board passed a resolution providing in part "that the privilege and authority to lay, construct and maintain conductors, mains and pipes, in, under and through the streets, lanes, alleys, squares, parks and highways in the Town of Jamaica, opened since October 4, 1871 and hereafter to be opened, for the purpose of conveying and conducting gas for the street lighting and other purposes, be granted to the Woodhaven Gas Light Company" (R. 282).

By thus receiving this valuable franchise, there was im-

posed upon the company a corresponding duty to serve the public.

People ex rel. New York & Queens Gas Co. v. McCall, 219 N. Y. 84; 245 U. S. 345;

People ex rel. Woodhaven Gas Light Co. v. Deehan, 153 N. Y. 528;

Russell v. Sebastian, 233 U. S. 195;

Lukrawka v. Spring Valley Water Co., 146 Pac. R. 640 (Cal.).

In the first case cited (*Douglaston* case) the Court of Appeals said at page 91:

“The occupants of these houses can get no gas unless they are supplied by the relator. It is the duty of the relator to supply their needs if practicable (*Wisconsin, M. & P. R. R. v. Jacobson*, 179 U. S. 287; *People ex rel. Woodhaven Gas Light Co. v. Deehan*, 153 N. Y. 528). The cost of the extension is not the only matter for consideration (*Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510, 529).”

This Court, in affirming the decision of the Court of Appeals, said (p. 351):

“Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render.”

In *People ex rel. Woodhaven Gas Co. v. Deehan*, 153 N. Y. 528, the relator sought to compel by mandamus the defendant, who was the Street Commissioner of the village

of Richmond Hill, to issue the necessary permit to lay its pipes in one of the streets of said village which was included in the town of Jamaica. The Court of Appeals, in upholding the relator's right to the permit, said at page 533:

"It is well known that business enterprises such as the relator is engaged in are based upon calculations of future growth and expansion.

A franchise for supplying gas not only confers a privilege, but imposes an obligation, upon the corporation to serve the public in a reasonable way."

In *Russell v. Sebastian*, 233 U. S. 195, the Court had under consideration the right of a gas company to extend its mains under a provision of the California State Constitution, in effect at the time the company was organized, which permitted it to use the public streets and thoroughfares for the laying of its pipes and conduits therein under proper regulations. The Court, in holding that the company had availed itself of the grant under said provision and had the right to lay its extensions without complying with an ordinance of the city of Los Angeles, passed pursuant to an amendment to said Constitution in 1911, said at page 208:

"This construction of the constitutional provision is the only one that is compatible with the existence of the duty which it was intended, as it seems to us, that the recipient of the State's grant should assume. The service, as has been said, was a community service. Incident to the undertaking in response to the State's offer was the obligation to provide facilities that were reasonably adequate. *Lumbard v. Stern*, 4 Cush. 60; *Cumberland Tel. Co. v. Kelly*, 160 Fed. Rep. 316, 324; *Atlantic Coast Line R. R. Co. v. North Carolina Corp. Com'n*, 206 U. S.

1, 27; *People ex rel. Woodhaven Gas Co. v. Deehan*, 153 N. Y. 528; 533; Morawetz on Corporations, Sec. 1129. It would not be said that either a water company or a gas company, establishing its service under the constitutional grant, could stop its mains at its pleasure and withhold its supply by refusing to extend its distributing conduits so as to meet the reasonable requirements of the community. But this duty and the right to serve, embracing the right under the granted privilege to install the means of service, were correlative."

In *Lukrawka v. Spring Valley Water Co.*, 169 Cal. 318; P. U. R. 1°15-B, 331, which was a proceeding to compel the water company to extend its mains, the Supreme Court of California went very thoroughly into the question of the duty of a public utility company to extend its services into new territory. The Court said at pages 324 and 325:

"It was for the benefit of the public that the franchise was extended to secure to the municipality of the city and county of San Francisco and its inhabitants an adequate supply of water as the reasonable and necessary wants of the community in that respect might require. This was the purpose and this the condition upon which the franchise was offered, and when it was accepted by the respondent it constituted a contract between the state and the respondent under which the rights, duties, and responsibilities of each were fixed, and by which they were bound. The franchise was offered by the state as an entirety, and, where a corporation organizing under the act offering it undertook the public duty which such franchise contemplated of supplying water to a municipality and its inhabitants, it accepts the franchise in its entirety. It was a community service which was contemplated by the extension of the franchise, and

which was intended should be assumed by a corporation accepting it, and it was solely that this assumed duty might be properly and entirely discharged that an easement over all the streets of the municipality was granted with the franchise. The franchise was not offered, nor could it be accepted, with any limitation as to the area to be fixed by the corporation organized under the act within which in the municipality it would furnish water to its inhabitants. It was intended that the public duty assumed should be discharged for the benefit of the municipality and its inhabitants as a community; that when a water company organized under the act undertook to furnish water to the inhabitants of a city it should be charged with the obligation of taking adequate measures to supply the reasonable needs and wants of all the inhabitants as they arose. The proper discharge of this public duty required not only that the company should provide a supply of water and establish a system for its distribution to meet the reasonable needs of the municipal community as it then existed, but it was under the obligation to keep in view the prospective and probable increase in population of the municipality and the necessarily increased demand for a water supply which would be consequent therefrom; to anticipate the natural growth of the municipality it had undertaken to serve as a whole, and to take reasonable measures to have under its control a sufficient supply of water and make gradual extensions of its distributive system to meet the reasonable demands for water by the growing community.

From the above cases, it appears that the Courts recognize that : an enterprise like that of the plaintiff-in-error's is one based upon calculations of future growth and expansion ; by the acceptance of the charter and secondary franchises

such a utility assumes a community service and must extend its system so as to meet the reasonable requirements of the community; it may not pick and choose, and thus restrict the development of a portion of its franchise territory because service thereto may not be presently profitable, thereby depriving the inhabitants of such a section of a service which the utility alone may render; and it must anticipate the natural growth of the municipality it had undertaken to serve as a whole.

This duty of a gas company to extend its mains so as to keep pace with the natural growth of its franchise territory is present, even though the unserved section is one considerably distant from its served area and the intermediate section is one from which no business may be anticipated. Thus, in the *Douglaston* case, the nearest gas mains ended at Bayside which is about a mile and a half from the Douglaston community. Bayside and Douglaston are separated by a salt marsh about half a mile or more wide and extending a mile inland, and through the middle of the marsh ran a navigable creek (219 N. Y. 84, at 85). There were, of course, no houses nor any prospect of any upon the salt marsh. In the present case no such unfavorable situation exists. In extending the gas mains from Cedar Manor to Springfield and Laurelton the company will pass through the intervening *productive* localities of Locust Manor, Locust Lawn and South Jamaica Place which, like the two other places, are growing rapidly and for the most part form one continuous settlement (see Exhibit 23, sheet 2). The company's counsel in the Court of Appeals accepted 625 as the number of houses constructed or under construction in the five places in that year, and 500 as the number which would take gas. The record in the *Douglas-*

ton case shows that the total number of houses in Douglaston, including Douglas Manor (to which the extension had been ordered), was only 230, of which it was claimed 225 would take gas.

As to the Cost and Return Upon Investment.

Confiscation is not established because the performance of a particular act ordered produces no corresponding return upon the expense involved or because the additional burden will reduce the company's income below 6 per cent. upon the value of the property in service.

Missouri Pacific Ry. Co. *v.* Kansas, 216 U. S. 262, 279.

Atlantic Coast Line *v.* N. Car. Corp. Commission, 206 U. S. 126.

Wisconsin etc. Ry. Co. *v.* Jacobson, 179 U. S. 287, 302.

People *ex rel.* New York & Queens Gas Co. *v.* McCall, *supra*.

Milwaukee Elec. R. & L. Co. *v.* Milwaukee, 252 U. S. 100, 105.

In the first case cited above, Mr. Justice White said (p. 279):

“But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, *other considerations are in the nature of things paramount*, since it cannot be said that an

order compelling the performance of such duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that a corporate charter was purely unilateral, that is, was binding in favor of the corporation as to all rights conferred upon it and was devoid of obligation as to duties imposed, even although such duties were the absolute correlative of the rights conferred."

In the *Atlantic Coast Line* case (*supra*) it was contended that, on the authority of *Smyth v. Ames*, 169 U. S. 466, an order of the State railroad commission requiring the operation of an additional train was unreasonable because such train could not be operated without pecuniary loss. Mr. Justice White pointed out that, in a case involving the validity of an order fixing maximum rates, a finding that the enforcement of such rates would not provide an adequate return, demonstrated the unreasonableness of the order, but that the case then under review did not directly involve any question whatever of the power to fix rates,

"but is concerned solely with an order directing a carrier to furnish a facility which it is a part of its general duty to furnish for the public convenience. The distinction between an order relating to such a subject and an order fixing rates coming within either of the hypotheses which we have stated is apparent. This is so because as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled although by doing so as an incident some pecuniary loss from rendering such service may result. It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole

scheme of rates was unreasonable under the doctrine of *Smyth v. Ames* * * *. Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary facilities is coterminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the services required, and the public need for its performance. A similar contention to the one we are considering was adversely passed upon in *Wisconsin &c. Ry. Co. v. Jacobson, supra*" (pp. 26-27).

In *Milwaukee Elec. R. & L. Co. v. Milwaukee*, 252 U. S. 100, there was involved an ordinance of the city of Milwaukee requiring the railway company to pave at its own expense with asphalt upon a concrete foundation the railway zone upon a certain street. The company alleged, as one of the reasons for declaring the ordinance confiscatory, that it had not been getting an adequate return theretofore upon its investment and that the extra expense would further reduce its income. This Court, in sustaining the ordinance, said (pp. 104-105):

"The financial condition of a public service corporation is a fact properly to be considered when determining the reasonableness of an order directing an unremunerative extension of facilities or forbidding their abandonment. *Mississippi Railroad Commission v. Mobile & Ohio R. R. Co.*, 244 U. S. 388; *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, 350. But there is no warrant in law for the contention that merely because its business fails to earn

full six per cent. upon the value of the property used, the company can escape either obligations voluntarily assumed or burdens imposed in the ordinary exercise of the police power. Compare *Missouri Pacific Ry. Co. v. Kansas*, 216 U. S. 262, 279; *Chicago, Rock Island and Pacific Ry. Co. v. Arkansas*, 219 U. S. 453; *Missouri Pacific Ry. Co. v. Omaha*, 235 U. S. 121."

In this connection attention is called to the case of *People ex rel. Richmond Light & Railroad Co. v. McCall*, 216 N. Y. 716, where the order of the Commission directing the construction of a double track by the railroad company had been unanimously upheld by the Appellate Division and later was unanimously upheld by the Court of Appeals. While there was no opinion rendered in either court, it would seem that both courts had to pass adversely upon the company's claims that the expenditure for the new construction (amounting to between \$60,000 and \$80,000) would produce little or no return, that the company was not on its existing investment earning a reasonable return over fixed charges, and that the railroad business as a whole was carried on at an actual loss, which would only be increased by the construction of the double track. In that case the Commission's contention was that the unprofitableness of the new construction or the failure of the company's business as a whole to yield a fair return could only be conclusive as to the reasonableness of the order when the benefit to the public from the order was doubtful or non-existent, and that the standard of service

should not vary with profitableness of the business only but with a demand for that service. In thus unanimously affirming the Commission's order, the courts must have held that the question of reasonableness is to be determined by comparing the burden imposed on the company with the benefit to be derived by the public and that the determination of the Commission would only be set aside where it was entirely clear that the Commission had erred in its interpretation of the law and not in a matter of judgment.

It appears clearly from the opinion in the present case that the Commission unquestionably considered *the expense involved and the company's financial situation in connection with the duty imposed by its franchise, the company's recognition of the reasonableness and propriety of the extension by promising to construct same to Springfield and in ordering the pipe for that purpose, and the needs of the rapidly growing localities*. After a consideration of all the relevant matters, it was the function of the Commission to determine whether the extension should be ordered. That such was one of the principal purposes for the creation of regulatory commissions was recognized by this Court when, in the *Douglaston* case it said (p. 351):

"To correct this disposition to serve where it is profitable and to neglect where it is not, is one of the important purposes for which these administrative commissions, with large powers, were called into existence with an organization and with duties which peculiarly fit them for dealing with problems such as this case presents * * *."

POINT V.

Plaintiff-in-error and The Brooklyn Union Gas Company.

We have endeavored to show in the preceding pages that even if it be assumed that the Commission considered, so far as it was possible to do so, the plaintiff in error as an independent company, the order directing the extension was a reasonable one. But the Commission could not be blind to the ever-present and obtrusive fact that the Woodhaven Company was entirely dependent upon and absolutely controlled by The Brooklyn Union Gas Company so that the alleged corporate separation was really fictitious. The evidence before it in the present case merely emphasized the relationship between the parent company and its subsidiaries which the Commission in former proceedings had found to exist and which it had described as follows: (*Hermann v. Newtown Gas Company*. Rates for gas in Second Ward of Queens, P. U. R. 1916 D, 825; 7 P. S. C. Rep. 1st. Dist. 101):

“These three companies, together with the Newtown Company, constitute a part of the distributing system of a great parent company, the Brooklyn Union Gas Company. And it is a parent company in the truest sense of the word. It maintains the most absolute control and ownership over them. The four companies are more than subsidiaries as that word is ordinarily used. They are the very limbs of the Brooklyn Union Gas Company. There is an absolute and inextricable identity of interests. The four small companies supply gas to the second and fourth wards but nominally. They are nothing more

than paper corporations, convenient operating divisions of the Brooklyn Union Company, which owns every share of their stock and has advanced every penny invested in them. No private investors own a share of their stock or are interested in one of them. The outstanding securities of the Brooklyn Union constitute the only connecting link between the investors and these four companies. None of them manufacture a foot of gas, and all that they distribute is made at and comes from the works of the Brooklyn Union Company, which company picks from among its employees the officers of the small companies, whose salaries, together with other general expenses, are arbitrarily divided and apportioned among the Queens companies and are at the most simple bookkeeping entries."

The above excerpt was quoted with approval in the opinion of the Appellate Division in the instant case (R. 345), and likewise in the opinion of the New York Supreme Court in *Jamaica Gas Light Company v. Nixon*, 110 Misc. Rep. 502. The Appellate Division has declared that the Commission, in considering the expense involved in the proposed extension, "should take into consideration" the existing relationship between the plaintiff in error and the parent company "and was not necessarily limited to a consideration of the expense with relation either to the capitalization or stated income" of the Woodhaven Company (R. 345).

Counsel for the plaintiff in error argues as if the Commission had no knowledge of, and there was no evidence before it to show, the relationship above described; that the Commission, in its treatment of the entire case, entirely disregarded such relationship; and that the Appellate Di-

vision went outside of the record in order to show that the two companies are one in fact. (Brief, pp. 12-17.) The record, however, does not sustain those contentions.

The opinion of the Commission describing the inter-corporate relations of the Brooklyn Union Gas Company, and its subsidiaries (*Hermann v. Newtown Gas Company, supra*), was handed down on May 25, 1916. At the same time, the Commission decided Cases Nos. 1787 and 1807 (*Schwarz v. Woodhaven Gas Light Company*, Case No. 1787, and *Re Rates for Gas in Fourth Ward of Queens*, Case No. 1807, 7 P. S. C. Rep. 1st Dist. 129; Abstracted in P. U. R. 1916 D, 651).

Counsel for the plaintiff in error at the hearing before the Commission in the instant case brought to the attention of the Commission its opinion in Cases Nos. 1787 and 1807 *by referring specifically to that opinion and by using it as a basis for showing facts upon which he relied* (R. 184-185).

Later in the present case, evidence was introduced in behalf of the Commission, through its own engineer who used the Commission's findings in Cases Nos. 1787 and 1807 as a basis for his appraisal. (R. 260-1; Ex. 32. R. 306). In the latter cases, the Commission was considering the rates for gas supplied by three subsidiaries of The Brooklyn Union Gas Company, namely, The Woodhaven Gas Light Company (plaintiff in error), The Jamaica Gas Light Company and The Richmond Hill & Queens County Gas Light Company, each of which supplies a part of the Fourth Ward of Queens County.

But the opinion of the Commission in the Fourth Ward cases must be read in connection with its opinion in the Second Ward case, (*Hermann v. Newtown Gas Co., supra*),

as the questions involved in the former cases were substantially the same as those presented and discussed in the opinion in the latter case, and to which the Commission made specific and frequent reference in its decision in the Fourth Ward cases, e. g.

“The rate for gas in the Fourth Ward of Queens involves for the most part the same problems as the rate for gas in the Second Ward. As in the case of the Newtown Company, the gas delivered to consumers in the Fourth Ward is supplied by the Brooklyn Union Gas Company, and distributed by companies which are mere paper corporations, entirely owned by the Brooklyn Union Gas Company. The price charged by the Brooklyn Union Company for gas constitutes the major part of the cost of rendering service to consumers in this territory. As in the Newtown case, the rate for gas cannot be determined without passing on the propriety of the Brooklyn Union Gas Company's charge for gas furnished to its subsidiary companies. This point has been fully discussed in connection with the Newtown case; it is not necessary to repeat it. The problems here are similar to those in the Newtown case.

(Schwarz v. Woodhaven Gas Light Company,
7 P. S. C. Rep. 1st Dist., 129, 132.)”

It appears, therefore, that counsel to plaintiff in error first called the attention of the Commission to its opinion in which the Commission had described the subsidiaries of the Brooklyn Union Gas Company, as “mere paper corporations.”

But, apart from the previous considerations and upon the assumption that the Commission had no prior knowledge of the corporate relations, we respectfully submit that

there was abundant evidence in the record to sustain the conclusion that the plaintiff in error was not an independent company, but a mere distributing agent of the parent company. Thus:

The Woodhaven Company has no funded debt, but all of its capital stock (\$20,000) is owned by the Brooklyn Union Company (R. 173). The president (also a director) of the former is the treasurer of the latter (R. 173). Both companies have the same secretary, who is also a director of the Woodhaven Company (R. 170). The president of the Brooklyn Union Company is the engineer of the Woodhaven Company and also one of its directors (p. 7 of Woodhaven Company's annual report for 1919). Mr. White and Mr. Waldron held the same positions with the parent company and all of its subsidiaries (R. 84, 124).

The main office of both companies is the same (R. 173).

The Brooklyn Union Company buys all materials for its subsidiaries and charges same to them when used (R. 144).

The pipe, which the testimony shows was intended to be used primarily for carrying out the promise to construct the extension, had been ordered by the Brooklyn Union Company (R. 136) and was later delivered at its general storage yard in Jamaica (R. 98).

The parent company manufactures all the gas distributed by the Woodhaven Company, which, of course, has to pay the price fixed by the parent company, which also fixes the rate of interest upon the open account between them.

The secretary of both companies admitted that the profit or loss of the Woodhaven Company as a matter of fact would eventually be chargeable to the

Brooklyn Union Company (R. 177), so that "what is taken from one pocket is simply put into another pocket" (*Hermann v. Newtown Gas Co., supra*).

It is plain from the record that the committee from the civic organizations and the people themselves understood that the company which was to construct the extension was the parent company. In this connection, attention is called to the following paragraph from Mr. Izor's report made shortly after Mr. White had visited his home on May 2, 1917, and which report Mr. Izor swore was true when made:

"Mr. White states to us that the *president of The Brooklyn Union Gas Company* called him into his office a short while ago and gave him an order to make this extension as soon as material had been received. So you see Mr. White has the order *from the company* and will proceed as soon as he has anything to proceed with (R. 111).

Another witness, Mr. Decker, a resident of Springfield for forty-five to fifty years, testified that about twenty years previously he and two other residents had called upon the president of *The Brooklyn Union Gas Company*, who "had guaranteed that in five years we would have gas" (R. 74).

Some of the foregoing facts showing the relationship between the parties were proved by trial counsel for plaintiff in error and substantially all of the other facts were received without any objection on his part. It is true that the Deputy Commissioner sustained an objection to the question on cross-examination as to the value of the property of the Brooklyn Union Company, but he allowed questions asking whether the Brooklyn Union Company had operated at a loss in 1918 and for the first five months of 1919 over counsel's objection that the Brooklyn Union Company was not a party to the proceeding (R. 182-3).

It is plain from a reading of the opinion of the Commission (R. 7) that the word "Company" was used interchangeably as to both companies, e. g., reference is made to the promise made by the "Company officials" and to the pipe that was ordered and "delivered to the Company's storage yards at Jamaica."

It was plain from the testimony that it was the Brooklyn Union Company which really made the promise to construct and that that company had ordered the pipe and had it delivered to its storage yard in Jamaica.

It is respectfully submitted that the facts before the Commission were such as to justify the Commission and the Appellate Division in concluding that the ownership by the Brooklyn Union Company of the stock of the Woodhaven Company had "been resorted to not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies. *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257, 273, and *United States v. Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516. In such a case the courts will not permit themselves to be blinded or deceived by mere forms of law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require" (*Chicago, M. & St. P. Ry. Co. v. Minn. Civic Assn.*, 247, U. S. 490, at 501).

In this case surely "the justice of the case" required the Commission to recognize the two companies, although nominally separate, as really identical, and to take such corporate identity into consideration as *one* of the matters properly before it in determining whether it was reasonable to order the extension. Indeed, the facts showing the relations between the two companies were so apparent that the communities and the Commission could not help but realize that, in dealing with the subsidiary, they were actually dealing with the parent company.

Under the decision of the Appellate Division and the Court of Appeals in this case it has been held that these two corporations are really identical. And, under principles laid down in various decisions of this Court, these two corporations must be deemed to be identical.

Hart Steel Company *v.* Railroad Supply Co.,
244 U. S. 294;

Southern Pacific Co. *v.* Lowe, 247 U. S. 330;

Chicago, M. & St. P. Co. *v.* Minn. Civic Assn.,
247 U. S. 490;

Gulf Oil Corp. *v.* Lewellyn, 248 U. S. 71.

Because of such identity, we respectfully submit that the Commission was justified in assuming *that it was entirely practicable for the extension to be constructed, especially in the absence of any facts, or any offer to show, or even any claim, that it was impracticable for the parent company to build the extension.*

IN CONCLUSION.

The plaintiff-in-error is now seeking to obtain from this Court an adjudication upon questions of law "which cannot affect the result as to the thing in issue in the case before it" (California v. San Pablo, etc., Railroad, 149 U. S. 308, 314).

After all has been said, no argument can change the outstanding facts that the gas company has constructed, during the past fifteen months, about thirty (30) miles of main through a number of the various communities included in the Commission's hearing order; that the Commission's order directed the extension of the gas mains to serve the five (5) communities of Locust Manor, Locust Lawn, South Jamaica Place, Springfield and Laurelton, for which extension about sixteen (16) miles of main would have been required; that the gas company has laid transmission and distribution mains so that it is now actually serving the communities of Locust Manor and Locust Lawn, St. Albans (including St. Albans Heights), Jamaica Junction, and the locality immediately adjacent to and north of Springfield; that twelve-inch transmission mains have been constructed along the highways contiguous to the other sections as part of the company's program to serve the residents thereof, and that it proposes to proceed diligently to furnish such service within a reasonable time.

What was declared to be impracticable has been shown to be practicable by the company's own action.

The Writ of Error should be dismissed or the judgment below affirmed.

Respectfully submitted,

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of Counsel.

